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Supreme Court of the United States

OCTOBER TERM, 1965

No. 1021

J. VERNON YOST, JOHN B. HOLEY, FREDDIE L. GRAVES, BENJAMIN D. GARNER, E. D. GRIGGS, PAUL K. MOON, JOHN J. HOOD, JAMES O. GILMORE, MRS. JAMES O. GILMORE, MRS. EARLOR MAE SHEETS, HENRY G. JONES, MRS. MAURICE H. JONES, and MRS. LILLIE D. SHEETS,

Petitioners

vs.

HON. EUGENE GUNBY, Ordinary of Fulton County; HON. KATHERINE MANN, Ordinary of DeKalb County; HON. ALTON W. TUCKER, Ordinary of Gwinnett County; HON. BEN W. FORTSON, JR., Secretary of State of Georgia, in his capacity as Chairman of the State Election Board; JAMES H. ALDREDGE, HAROLD F. McCART, and ARCHIE LINDSEY, as Commissioners of Fulton County, Georgia; BRINCE MANNING, TOM CALLAWAY, J. C. HAYNES, JIM ALMAND, and BILL EVANS, as Commissioners of DeKalb County; IVAN ALLEN, JR., as Mayor of the City of Atlanta, and each and all of the Members of the Board of Aldermen of the City of Atlanta,

Defendants

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

G. SEALS AIKEN,
Attorney for Petitioners,
Suite 1409-10 Candler Bldg.,
Atlanta, Georgia 30303

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J. VERNON YOST, JOHN B. HOLEY, FREDDIE L. GRAVES, BENJAMIN D. GARNER, E. D. GRIGGS, PAUL K. MOON, JOHN J. HOOD, JAMES O. GILMORE, MRS. JAMES O. GILMORE, MRS. EARLOR MAE SHEETS, HENRY G. JONES, MRS. MAURICE H. JONES, and MRS. LILLIE D. SHEETS,

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Defendants

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

J. Vernon Yost, John B. Holey, Freddie L. Graves,

Benajmin D. Garner, E. D. Griggs, Paul K. Moon, John J. Hood, James O. Gilmore, Mrs. James O. Gilmore, Mrs. Earlor Mae Sheets, Henry G. Jones, Mrs. Maurice H. Jones, and Mrs. Lillie D. Sheets file this their petition for writ of certiorari to the Supreme Court of Georgia for the purpose of having reviewed, corrected, and reversed the decision and judgment of that Court of November 9, 1965, arbitrarily and capriciously dismissing from the bench, without a hearing or opportunity to be heard, the appeal of petitioners from an order of the Superior Court of Fulton County, Georgia of July 28, 1965, dismissing the petitioners' petition on general demurrer; and the decision and judgment of the Supreme Court of Georgia of November 29, 1965 denying petitioners' motion for rehearing and holding that the affidavits of G. Seals Aiken, Benjamin D. Garner, and George H. Keeler, attached to and made a part of said motion, constituted no part of the motion and directing and causing the Clerk of said Court "to detach the said affidavits from the motion and return them together with a copy of this order to counsel for movants."

The peremptory dismissal by the Supreme Court of Georgia of petitioners' appeal deprived them of a hearing and decision on the substantial federal questions presented by the appeal, including the alleged invalidity of the election of June 16, 1965 as to whether the City of Atlanta and Fulton County especially would participate in the Metropolitan Atlanta Rapid Transit Authority Act of 1965 and whether the Seventeenth Amendment of the Georgia Constitution and the Metropolitan Atlanta Rapid Transit Authority Act under which said election was held violated Section I of the Fourteenth

Amendment and other portions of the U. S. Constitution in the particulars specified.

The Supreme Court of Georgia is the highest court of this State in which a decision in this case could be had.

CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The decision of the Supreme Court of Georgia sought to be reviewed was first rendered arbitrarily and capriciously from the Bench on November 9, 1965 when counsel for petitioners appeared before the court en banc to argue the case pursuant to the usual formal notice from the Clerk thereof to appear for that purpose. When counsel for petitioners arose and attempted to argue their case, Mr. Chief Justice Duckworth announced that the case was being dismissed and that counsel for petitioners would not be allowed to make any argument because their enumeration of errors was not filed within fifteen days from the date of docketing the appeal. Counsel for petitioners then requested the opportunity of filing a brief on said point, which was first granted and then denied, all as set forth in petitioners' motion for rehearing. (R. 132-156)

Rule 20 of the Supreme Court of Georgia provides that "The brief of counsel for the appellant must be filed with the clerk within 15 days after the docketing of the case in this court," and Section 14 of the Georgia Appellate Practice Act of 1965 as amended (Ga. Code Sec. 6-810), Pocket Parts, provides that "The Appellant*** shall, AT THE TIME THE BRIEF IS FILED IN THE SUPREME COURT*** file with the Clerk of the Appellate Court an enumeration of the errors relied

upon, and shall likewise simultaneously file a copy of such enumeration of errors with the Clerk of the Trial Court, which shall set out separately each error relied upon." In compliance with said Rule and Act, counsel for petitioners obtained from Mr. Chief Justice Duckworth within the time allowed by said Rule an extension of ten days in which to file their brief and he accordingly filed said brief and enumeration of errors simultaneously within said extension of time, all as shown by petitioners' motion for rehearing and accompanying affidavits made a part thereof. (See Certificate of Clerk of Supreme Court of Georgia so stating).

On November 10, 1965 petitioners' counsel received through the mail a formal written decision and judgment of the Supreme Court of Georgia stating that the appeal was dismissed on November 9, 1965. (R-132).

Petitioners filed a timely motion for rehearing with supporting affidavits showing their appeal was arbitrarily and capriciously dismissed by the Supreme Court of Georgia from the Bench without a hearing or opportunity to be heard and therefore without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. The said motion was denied as aforesaid on November 29, 1965 without passing upon said federal constitutional question raised therein. (R. 156).

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is Section 1257 (3) of Title 28 U.S.C.A., reading in part as follows: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: *** (3) By writ of certiorari,

***Where any title, right, privilege or immunity is specially set up or claimed under the Constitution *** of * * * the United States."

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Georgia in arbitrarily and capriciously dismissing petitioners' appeal from the Bench without a hearing or opportunity to be heard deprived the petitioning citizens and taxpayers of Georgia and of the United States of their liberty and property without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, accorded to other persons in Georgia in like circumstances and similar situations, as contended by petitioners.

2. Whether the Supreme Court of Georgia deprived petitioners of their liberty and property without due process of law and equal protection of the law by arbitrarily and capriciously holding that the affidavits attached to, made a part of, and filed with their motion for rehearing (showing how their appeal from the Superior Court of Fulton County Georgia was arbitrarily and capriciously dismissed from the Bench without a hearing or opportunity to be heard in a case involving substantial Federal constitutional questions timely and properly raised) constituted "no proper part of the motion for a rehearing" and in directing and causing its clerk to detach the said affidavits from the motion and return them to petitioners' counsel.

3. Whether the Supreme Court of Georgia can prevent this Court from exercising its jurisdiction in granting the writ of certiorari to review and reverse the former, by directing and causing its clerk to detach and return

to petitioners' counsel the affidavits attached to, made a part of, and filed with their motion for rehearing, showing how that Court arbitrarily and capriciously dismissed their appeal from the Superior Court of Fulton County, Georgia involving Federal constitutional questions timely and properly raised, without a hearing or opportunity to be heard, in violation of Section I of the Fourteenth Amendment of the Constitution of the United States.

4. Whether the Supreme Court of Georgia deprived petitioners of their liberty and property without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in dismissing their appeal on the ground that it was required by the Georgia Appellate Practice Act of 1965 as amended (1965 Ga. Laws 240-44) to do so because petitioners' Enumeration of Errors was not filed within fifteen days from the date of docketing the appeal and that it had invariably so held in other cases, WHEREAS the said Act does not so require but requires that the Enumeration of Errors be filed "at the time the brief is filed in the Supreme Court" and petitioners filed their Enumeration of Errors at the time of filing their brief and within the extension of time granted by said Court for the filing of said Brief, and, furthermore, the said court in the case of Mallard vs Mallard, No. 23151, ——Ga. ——, on Oct. 19, 1965, took jurisdiction and reversed the trial court without even mentioning the fact that the case was docketed on August 20, 1965, and the Enumeration of Errors was not filed until Sept. 15, 1965, or twenty six days after the date of docketing the case, and no extension of time for

filing the brief or the Enumeration of Errors was requested or obtained.

5. Whether the Supreme Court of Georgia deprived petitioners of their liberty and property without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the *U. S. Constitution* by arbitrarily and capriciously denying on Nov. 29, 1965 petitioners' motion for rehearing specifically alleging that they were deprived of due process of law and of equal protection of the law by said court, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, in dismissing their appeal without a hearing or opportunity to be heard and in erroneously holding that it had invariably held that the Georgia Appellate Practice Act of 1965 as amended required a dismissal of the appeal where the Enumeration of Errors was not filed within fifteen days from the date of docketing the appeal, whereas said court had taken jurisdiction and reversed the trial court in Mallard vs Mallard, No. 23151, —Ga. —, on Oct. 19, 1965 without even mentioning the fact that the case was docketed on Aug. 20, 1965 and the Enumeration of Errors was not filed until Sept. 15, 1965, or twenty six days after the date of docketing the case, and no extension of time for filing the brief or Enumeration of Errors was sought or obtained, and the said court arbitrarily and capriciously ignored said substantial Federal constitutional grounds timely and properly raised by petitioners in their said motion for rehearing.

6. Whether the Supreme Court of Georgia deprived the petitioners of their liberty and property without due process of law and without equal protection of the law by arbitrarily and capriciously holding that the affidavits

by G. Seals Aiken, Benjamin D. Garner, and George H. Keeler, attached to petitioners' motion for rehearing in that court and expressly made a part thereof by petitioners, constituted no proper part of said motion for rehearing, and in arbitrarily and capriciously directing and causing the Clerk of said court to detach said affidavits from said motion for rehearing and to return them to counsel for petitioners, although they constitute an essential part of said motion for rehearing in setting forth for the record the facts which transpired at the time petitioners' appeal was arbitrarily and capriciously dismissed from the Bench without a hearing or opportunity to be heard, as shown by said affidavits, and also whether the Supreme Court of Georgia should be directed to have said affidavits re-attached to said motion for rehearing and re-filed by the Clerk of said Court so they can be certified as a part of the record by him for transmission to this Court for consideration with this petition for certiorari.

7. Whether the petitioning citizens and taxpayers of Georgia and the United States were deprived of their liberty and property by the Superior Court of Fulton County, Georgia without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in their petition in said trial court by the refusal of Trial Judge Moore to disqualify as required by law and by his dismissal of said petition without a trial or opportunity to present evidence in support thereof and without a trial of all questions of fact by a jury as demanded by petitioners and as required by law, and whether the Supreme Court of Georgia deprived petitioners of their liberty and proper-

ty without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by dismissing petitioners' appeal to that court from the Superior Court of Fulton County, Georgia without a hearing or opportunity to be heard and without even considering or passing upon any of the substantial federal constitutional grounds raised by petitioners in their petition in the trial court and their notice of appeal and enumeration of errors of the trial court and motion for rehearing in the Supreme Court of Georgia, including the allegations of petitioners that the Metropolitan Atlanta Rapid Transit Authority Act and the Seventeenth Amendment of the Constitution of Georgia under which it was enacted and the referendum election of June 16, 1965 pursuant thereto deprive petitioners of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified by petitioners in their said petition, appeal, enumeration of errors, and motion for rehearing.

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED.

This litigation commenced on June 23, 1965, by the filing of a petition by petitioners against the defendants attacking the legality and constitutionality of the special election on June 16, 1965 in Metropolitan Atlanta as it related to participation in the Metropolitan Atlanta Rapid Transit Authority Act of 1965 and said Act and Amendment XVII of the Constitution of Georgia under which said election was held. Petitioners alleged in said petition that the said election and the Metropolitan At-

lanta Rapid Transit Authority Act and Amendment XVII of the Constitution of Georgia under which said election was held violated Section I of the Fourteenth Amendment and other provisions of the U. S. Constitution as well as many provisions of the Georgia Constitution in the particulars specified. (R. 46, 82, 93).

Petitioners demanded a jury trial of all questions of fact presented in their verified petition and moved to disqualify Presiding Judge Moore of the Superior Court of Fulton County on the ground that the Georgia Election Code 1704 (b) expressly provides that in such an election contest case "the Superior Court having jurisdiction shall be presided over by the Judge of the Superior Court who resides nearest the courthouse in which the contest is filed but who resides in a judicial circuit wholly outside of the congressional or senatorial district or other area involved in the contest," etc. Presiding Judge Moore, nevertheless, denied petitioners' motion to disqualify him and also refused to grant petitioners a jury trial as to the facts as demanded by them and required by law, and petitioners alleged in their petition that Presiding Judge Moore by so doing deprived them of due process of law and of equal protection of the law granted to other persons in Georgia in like circumstances and similar situations, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. (R. 37-8, 46, 82, 92, 93).

Petitioners alleged in their petition in the trial court that the said Amendment XVII of the Constitution of Georgia deprives them of their liberty and property without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in that it au-

thorizes the General Assembly of Georgia to grant to the City of Atlanta and counties of the Metropolitan Atlanta area participating in said Metropolitan Atlanta Rapid Transit Authority Act unlimited power to tax petitioners to acquire and maintain a rapid transit system, even to the extent of levying taxes for the full value of petitioners' property, thereby confiscating the same.

Petitioners alleged in their petition in the trial court that the said Amendment XVII of the Constitution of Georgia deprives them of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in that it grants to the Metropolitan Atlanta Rapid Transit Authority and the persons acting under it unlimited legislative, executive, and judicial power in violation of Article I, Section I, Paragraph XXIII of the Georgia Constitution, and Article IV, Section IV of the Constitution of the United States guaranteeing to every State in the Union a republican form of government, and Amendment XIII of the U. S. Constitution providing that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Petitioners set forth in their petition in the trial court many other particulars in which the Seventeenth Amendment of the Georgia Constitution, the Metropolitan Atlanta Rapid Transit Authority Act enacted thereunder, and the election of June 16, 1965 held thereunder violated both the Constitution of the United States and the Constitution of Georgia.

In petitioners' enumeration of errors on appeal to the Supreme Court of Georgia, they assigned error on all

the rulings of the Superior Court of Fulton County, Georgia adverse to the contentions of petitioners in their petition and motion to disqualify the trial judge, as being contrary to law and the Constitutions of the United States and of Georgia in all the particulars and for all the reasons set forth in their petition and record before the Court, and especially Section I of the Fourteenth Amendment of the U. S. Constitution, in that petitioners were thereby deprived of applicable and controlling provisions of the Georgia Constitution and the law granted to other persons in like circumstances and similar situations, and in said manner were deprived of their liberty and property without due process of law and equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution.

All of the federal constitutional questions presented by petitioners were timely and properly raised and urged and insisted upon by petitioners' counsel from the very beginning but were ignored by both the Superior Court of Fulton County, Georgia and the Supreme Court of Georgia.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

The federal questions involved in this petition for certiorari are substantial and of gravity and importance in that the decision of the Supreme Court of Georgia of November 9, 1965 in peremptorily dismissing petitioners' appeal from the Superior Court of Fulton County, Georgia, without a hearing or opportunity to be heard, is ARBITRARY AND CAPRICIOUS and subjects petitioners to the deprivation of their liberty and prop-

erty in the arbitrary discretion of the Metropolitan Atlanta Rapid Transit Authority and persons acting under it, without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars and manner set forth in petitioners' verified petition, enumeration of errors on appeal to the Supreme Court of Georgia, and the record before this Court.

In the case of *Tolbert vs Long*, Ordinary, et al, 134 Ga. 292, 67 S.E. 826, the Supreme Court of Georgia held that equity will entertain jurisdiction of a petition by a citizen and taxpayer to enjoin against the declaration of the result of an election held under a special act establishing a board of commissioners for a named county, defining their duties, etc., which act provides that it shall not become operative in the county unless ratified by a vote of the people, WHERE IT IS CHARGED THAT THE WHOLE ACT IS UNCONSTITUTIONAL, or infected with other illegality, frustrating the legislative plan of ratification. THIS IS EXACTLY WHAT PETITIONERS (citizens and taxpayers of Metropolitan Atlanta and of Georgia and of the United States) did in the case at bar. They filed a verified petition alleging fraud, irregularities, and violation of mandatory provisions of the law and applicable provisions of the Georgia Constitution by the officials in charge of the referendum election of June 16, 1965 and alleged the particulars in which said election and the Seventeenth Amendment of the Constitution of Georgia and the Metropolitan Atlanta Rapid Transit Authority Act under which said election was held deprived them of their liberty and property without due process of law and equal protection of the law, in violation of Section

I of the Fourteenth Amendment of the U. S. Constitution. (R. 1, 46, 82, 93). They secured a temporary injunction to prevent the declaration of the results of said referendum election and to prevent any action or the assumption of any office of any kind or the expenditure of any public funds for the purpose implicit in the referendum election. (*Appendix*) This injunction was arbitrarily and capriciously dissolved by the disqualified trial judge without any evidence or the opportunity to present any evidence and without a jury trial of the questions of fact presented by the verified petition as required by the jury trial demand of petitioners and the law applicable thereto. (R. 100).

In the case of *Marbut et al vs Hollingshead et al,* 172 Ga. 531, 158 S.E. 28, the Supreme Court of Georgia held that a court of equity will enjoin an election where the constitutional rights of citizens and taxpayers are sought to be invaded by an attempt to make an unconstitutional or inapplicable law operative through the means of an election and that the principle upon which this decision is based is that such an election would bring about confusion, subject citizens and taxpayers to damages, and cause a multiplicity of suits.

Petitioners vigorously urged all of said federal constitutional grounds before the Superior Court of Fulton County, but it ignored them and dismissed petitioners' verified petition upon general demurrer.

Petitioners then appealed to the Supreme Court of Georgia, which had appellate jurisdiction of said case under the Georgia Constitution, and urged all of said federal constitutional questions in their notice of appeal and enumeration of errors and briefs. (R. 1) That Court also ignored said federal constitutional grounds

by dismissing from the bench without a hearing and without an opportunity to be heard, the appeal of petitioners, thereby depriving petitioners of due process of law and equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution.

Petitioners filed a timely motion for rehearing with accompanying affidavits, which were made a part thereof, showing that petitioners' said appeal was arbitrarily and capriciously dismissed without a hearing and without an opportunity to be heard and contrary to its decisions in other cases for other persons in like circumstances and similar situations, and that petitioners were thereby deprived of due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. The Supreme Court of Georgia denied said motion for rehearing on Nov. 29, 1965 without passing upon said federal constitutional grounds raised in said Court or upon the federal constitutional grounds raised in the Superior Court of Fulton County, Georgia, and held that the affidavits attached to petitioners' said motion for rehearing and made a part thereof and filed with said motion constituted "no proper part of the motion for a rehearing" and directed and caused the Clerk of the Supreme Court of Georgia to detach the said affidavits from the motion and return them together with a copy of said order of Nov. 29, 1965 to counsel for petitioners. (R. 156).

In the written decision of the Supreme Court of Georgia confirming its oral dismissal of petitioners' appeal without a hearing or opportunity to be heard, it states: "In this case the appellants filed their enumeration of errors nineteen days after the appeal was docketed in this

court. Hence, the case is controlled by *Stanford vs Evans, Reed and Williams,* 221 Ga.____(—SE 2nd—), Case No. 23160, which held that an enumeration of errors filed more than fifteen days after the appeal was docketed in this court was not timely." The said statement of the Supreme Court of Georgia IS INCORRECT AND SAID CASE CITED BY IT DOES NOT SUPPORT ITS DECISION IN THIS CASE BUT DEPRIVES PETITIONERS OF THEIR LIBERTY AND PROPERTY WTHOUT DUE PROCESS OF LAW AND WITHOUT EQUAL PROTECTION OF THE LAW, IN VIOLATION OF SECTION I OF THE FOURTEENTH AMENDMENT of the U. S. Constitution for many reasons, some of which are as follows: (1) That case was dismissed because the notice of appeal was not filed within the time required under the 1965 Georgia Laws, pages 18, 29 as amended by 1965 Georgia Laws pages 240, 241 (Ga. Code Annotated Section 6-809). (2) On motion for rehearing in that case that court stated: "For the reasons therein stated we adhere to our original judgment. However, for another insurmountable reason this case must be dismissed. Upon further examination of the record, we find that the enumeration of errors was filed seventeen days after the case was docketed in this court. Under the view we take of Sections 13 and 14 of the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 29, as amended Ga. L. 1965, pp. 240, 243; Code Ann. Sections 6-809 and 6-810) they require the enumeration of errors to be filed within the time prescribed by this court for the appellant to file his brief. Rule 20 of the Rules of the Supreme Court of the State of Georgia specifies that the appellants' brief must be filed with the clerk within 15 days after the docketing of the case in

this court. Hence, the enumeration of errors in this case was not timely and, for this further reason, the appeal is dismissed." (3) No extension of time was sought or granted for the filing of a brief or enumeration of errors in that case. (4) The court stated as aforesaid: "Under the view we take of Sections 13 and 14 of the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 29, as amended Ga. L. 1965, pp. 240, 243; Code Ann. Sections 6-809 and 6-810) they require the enumeration of errors to be filed within the time prescribed BY THIS COURT FOR THE APPELLANT TO FILE HIS BRIEF." (Capitals added). (5) Appellants' enumeration of errors in the case at bar WAS "filed within the time prescribed BY THIS COURT FOR THE APPELLANT TO FILE HIS BRIEF." (6) Section 14 of the Appellate Practice Act of 1965 (Ga. Laws 1965, pages 29-30) prior to amendment, provided that, "The appellant *** shall file as a part of their brief in the appellate court, at such time as may be prescribed by its rules, an enumeration of the errors relied upon ***." This was changed by an amendment of said Act in Ga. Laws 1965, pages 243-4, to provide that, "The appellant *** shall, AT THE TIME THE BRIEF IS FILED in the Supreme Court or the Court of Appeals, as the case may be, file with the clerk of the appellate court, an enumeration of errors relied upon, and shall likewise simultaneously file a copy of such enumeration of errors with the clerk of the trial court **." (Capitals added) The said statute does not provide, either before or after the amendment thereof, that the enumeration of errors must be filed within fifteen days after the docketing of the case as held by this court in *Stanford vs Evans, Reed and Williams,* supra, but said Appellate Practice Act of 1965 as amended does

require that the appellant shall file an enumeration of errors AT THE TIME THE BRIEF IS FILED in the Supreme Court. (7) The decision of this court in the case of *Stanford vs Evans, Reed and Williams,* supra, is incorrect in holding that Sections 13 and 14 of the Appellate Procedure (Practice) Act of 1965 as amended "require the enumeration of errors to be filed within the time prescribed by this court for the appellant to file his brief." The said act as amended requires instead that, "The appellant *** shall, AT THE TIME THE BRIEF IS FILED in the Supreme Court or the Court of Appeals, as the case may be, file with the clerk of the appellate court an enumeration of the errors relied upon," etc. (Capitals added). (8) This court has the inherent power to change its rules and to grant extensions of time for the filing of briefs, enumeration of errors relied upon, and other documents. It has the power to do so under the express provisions of its own Rule 8 providing that, "Once a case is filed in this court, it will in the exercise of the judicial power conferred upon it by the constitution (Code Ann. Sections 2-3704, 2-3707; Const. 1945) render any judgment it thinks proper, including judgments of dismissal, notwithstanding the provisions of the Appellate Practice Act of 1965," and the applicable provisions of the Georgia Constitution cited by it in said rule and especially Article VI, Section 2, paragraph 7 (Ga. Code Sec. 2-3707) providing that, "The Supreme Court shall have power to hear and determine cases when sitting in a body, UNDER SUCH REGULATIONS AS MAY BE PRESCRIBED BY IT." (Capitals added). (9) Rule 35 of the Supreme Court of Georgia expressly provides that, "Notice of a motion to dismiss and of the grounds thereof should be given in writing to

counsel for the appellant five days before the case is called for argument, service thereof to be made and shown as required in the service of briefs***." No such motion was made by appellees and no notice of a motion to dismiss was ever given orally or in writing to appellants or their counsel, and no motion to dismiss appellants' appeal was made by appellees or their counsel when this case was called for argument by the Supreme Court of Georgia on November 9, 1965. When counsel for appellants sought to argue the case when called for argument on Nov. 9, 1965 by the court, the Chief Justice simply stated the case would be dismissed on the ground that "the enumeration of errors was not filed within fifteen days from the date of docketing the case as required by the statute." The statute DID NOT AND DOES NOT SO REQUIRE BUT ONLY REQUIRES THAT THE ENUMERATION OF ERRORS BE FILED AT THE TIME THE BRIEF IS FILED. (10) The Supreme Court of Georgia under its Rule 8 and the provisions of the Georgia Constitution therein relied upon and under its inherent power had ample power and jurisdiction to grant an extension of time in which to file both briefs and enumerations of errors, and by granting an extension of time in this case in which to file a brief, without excepting the enumeration of errors, necessarily granted the same extension of time in which to file the enumeration of errors because Section 14 of the Appellate Practice Act of 1965 as amended expressly provides that the appellant shall file the enumeration of errors AT THE TIME THE BRIEF IS FILED IN THE SUPREME COURT. As shown by the affidavit of counsel for petitioners attached to their motion for rehearing in the Supreme Court of Georgia, the Chief

Justice of that Court did not except the enumeration of errors when he granted the extension of ten days to petitioners in which to file a brief, or make any statement about the enumeration of errors. (11) The statement of the Supreme Court of Georgia on Nov. 9, 1965 that the Appellate Practice Act of 1965 as amended required the enumeration of errors to be filed within fifteen days from the date of the docketing of the case and that it is bound thereby is incorrect because the statute does not so require but, if it did, that court has ample power and jurisdiction under its own Rule 8 and the provisions of the Georgia Constitution therein relied upon, to grant an extension of time for the filing of both briefs and enumerations of error. (12) Furthermore, Section 6 of the Appellate Practice Act of 1965 provides that, "any Justice or Judge of the Appellate Court to which the appeal is to be taken may, in his discretion, and without motion or notice to the other, grant extension of time for the filing of (a) notice of appeal, (b) notice of cross appeal, (c) transcript of the evidence and proceedings on appeal or in any other instance where filing of the transcript is required or permitted by law, (d) designation of record referred to under Section 11 hereof; and (e) ANY OTHER SIMILAR MOTION, PROCEEDING OR PAPER FOR WHICH A FILING TIME IS PRESCRIBED**." (Capitals added). (13) The declared purpose of the Appellate Practice Act of 1965 was to "comprehensively and exhaustively revise, supersede, and modernize appellate and other post-trial procedure in civil and criminal cases" to prevent the dismissal of cases on mere technicalities, and to require decisions of cases on their merits. (14) The decision of said court in dismissing

petitioners' appeal on the grounds stated and without a hearing or opportunity to be heard, violates the letter and spirit of said Act and deprives petitioners of their liberty and property without due process of law and equal protection of the law granted to others in like circumstances and similarly situated in the particulars specified in their verified petition in the trial court and appeal to the Supreme Court of Georgia and motion for rehearing therein, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, providing that no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws as contended by petitioners in the Supreme Court of Georgia. (15) The statement of the Supreme Court of Georgia on Nov. 9th, as shown by petitioners' motion for rehearing and affidavits attached thereto filed in said court, that it had invariably held that an appeal must be dismissed where the enumeration of errors is not filed within fifteen days from the date of the docketing of the case, is erroneous in that the said court did not disclaim jurisdiction or dismiss the appeal in the case of *Mallard vs Mallard,* No. 23151, decided on Oct. 19, 1965, in which the enumeration of errors was not filed within fifteen days from the date of docketing the case, as shown by the affidavit of counsel for petitioners attached to their motion for rehearing, but granted the appeal and reversed the trial court without even mentioning the fact that the enumeration of errors had not been filed within fifteen days from the date of docketing the case. The judgment of said court of Nov. 9, 1965 therefore in dismissing petitioners' appeal upon the ground that the enumeration of errors was not filed

within fifteen days from the date of docketing the case deprives petitioners of their liberty and property without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in that petitioners were deprived of due process of law and equal protection of the law granted to the appellant in the case of *Mallard vs Mallard,* supra, under like circumstances and similarly situated except that no extension of time for filing the brief was requested or granted in the Mallard case. (16) As shown by the affidavit of counsel for petitioners attached to their motion for rehearing in the Supreme Court of Georgia, no extension of time for filing of a brief was obtained from said court in any of the cases dismissed by it for failure to file the enumeration of errors within fifteen days from the date of docketing the cases except the case of these petitioners. (17) Ga. Code Section 6-1606 provides that, "No decision shall be delivered ore tenus but the same shall be announced by a written synopsis of the points decided, which shall be delivered during the term in which the decision was made." (18) Section 14 of the Appellate Practice Act of 1965 as amended provides that the cross appellant shall, at the time the brief is filed in the Supreme Court, file with the Clerk of said court an enumeration of the errors relied upon and shall likewise simultaneously file a copy of such enumeration of errors with the Clerk of the trial court, which shall set out separately each error relied upon. No enumeration of errors was filed by the defendants in this case and no motion to dismiss petitioners' appeal was made by defendants. The petitioners were, therefore, deprived of their liberty and property without due process of law and without equal protection

of the law granted to others in like circumstances and similar situations as specified, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. (19) Petitioners have been deprived of their liberty and property without due process of law and without equal protection of the law by the Supreme Court of Georgia in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by its failure and refusal to decide the federal constitutional questions raised in petitioners' petition as amended and in their appeal to and motion for rehearing in said court. (20) The action of the Supreme Court of Georgia in refusing to consider the amount of the proposed indebtedness of MORE THAN ONE BILLION DOLLARS in initial construction cost of the Proposed Rapid Transit Authority Project (to the payment of which petitioners will be forced to contribute in taxes without any limitation except the arbitrary discretion of the Metropolitan Atlanta Rapid Transit Authority and persons acting under it), as shown by the affidavits attached to petitioners' motion for rehearing in said court, deprives petitioners as citizens and taxpayers of Metropolitan Atlanta and of Georgia and of the United States of their liberty and property without due process of law and without equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution by depriving them of the application and effect of Article VII, Section VII, Paragraph I of the Georgia Constitution, Ga. Code Sec. 87-601, and the decision of that court in *Renfroe vs City of Atlanta,* 140 Ga. 81, 78 S.E. 449, granted to other persons in like circumstances and similar situations.

As held by the U. S. Supreme Court in *State of Missouri ex rel Gaines vs Canada et al,* 305 U.S. 357 (7), 59

S. Ct. 232, THE EQUAL PROTECTION OF LAWS IS A PLEDGE OF THE PROTECTION OF EQUAL LAWS. As also stated by said court in *Hill vs State of Texas,* 316 U.S. 400, 62 S. Ct. 1159: "EQUAL PROTECTION OF THE LAW IS SOMETHING MORE THAN AN ABSTRACT RIGHT. IT IS A COMMAND WHICH THE STATE MUST RESPECT – THE BENEFIT OF WHICH EVERY PERSON MAY DEMAND." (Capitals added).

In the case of *Norris vs Ala.,* 294 U.S. 587, 55 S. Ct. 579, the U. S. Supreme Court held, "Where a federal right is specially claimed in a State Court (which was timely done in the case at bar), this court must inquire whether the right was denied, not merely in express terms, but also in substance and effect, and, if necessary, evidence must be examined."

In the case of *Malinski et al vs People of State of New York,* 324 U.S. 401, 65 S. Ct. 781, the U. S. Supreme Court held: "Judicial review of the guaranty of due process imposes on the Federal Supreme Court an exercise of judgment upon the whole course of proceedings to ascertain whether they offend those canons of decency and fairness which express the motions of justice of English-speaking people."

Section I of the Fourteenth Amendment of the U. S. Constitution expressly provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

In construing the Fourteenth Amendment of the U. S. Constitution, the U. S. Supreme Court held in *Chambers et al vs State of Florida,* 309 U.S. 227, 60 S.

Ct. 472: "*** ALL PEOPLE MUST STAND ON AN EQUALITY BEFORE THE BAR OF JUSTICE IN EVERY AMERICAN COURT. *** UNDER OUR CONSTITUTIONAL SYSTEM, COURTS STAND AGAINST ANY WINDS THAT BLOW AS HAVENS OF REFUGE FOR THOSE WHO MIGHT OTHERWISE SUFFER BECAUSE THEY ARE HELPLESS, WEAK, OUTNUMBERED, OR BECAUSE THEY ARE NON-CONFORMING VICTIMS OF PREJUDICE AND PUBLIC EXCITEMENT. *** NO HIGHER DUTY, NO MORE SOLEMN RESPONSIBILITY, RESTS UPON THIS COURT, THAN THAT OF TRANSLATING INTO LIVING LAW AND MAINTAINING THIS CONSTITUTIONAL SHIELD DELIBERATELY PLANNED AND INSCRIBED FOR THE BENEFIT OF EVERY HUMAN BEING SUBJECT TO OUR CONSTITUTION — OF WHATEVER RACE, CREED OR PERSUASION." (Capitals added).

In the case of *Hovey vs Elliott*, 167 U.S. 409, 17 S. Ct. 841, the U. S. Supreme Court held in part:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends. * * * A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial deter-

mination of his rights, and is not entitled to respect in any other tribunal. * * * IT IS DIFFICULT TO SPEAK OF A DECREE THUS RENDERED WITH MODERATION. IT WAS, IN FACT, A MERE ARBITRARY EDICT, CLOTHED IN THE FORM OF A JUDICIAL SENTENCE. THIS LANGUAGE BUT EXPRESSES THE MOST ELEMENTARY CONCEPTION OF THE JUDICIAL FUNCTION * * *." (Capitals added).

In the case of *Yick Wo vs Hopkins,* 118 U.S. 356, 6 S. Ct. 1071-3, the U. S. Supreme Court held: "But the fundamental right to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' FOR THE VERY IDEA THAT ONE MAN MAY BE COMPELLED TO HOLD HIS LIFE, OR THE MEANS OF LIVING, OR ANY MATERIAL RIGHT ESSENTIAL TO THE ENJOYMENT OF LIFE, AT THE MERE WILL OF ANOTHER, SEEMS TO BE INTOLERABLE IN ANY COUNTRY WHERE FREEDOM PREVAILS, AS BEING THE ESSENCE OF SLAVERY ITSELF. * * * Though the law itself be fair on its face, and impartial in appliance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still

within the prohibition of the constitution." (Capitals added).

In the case of *Moody and Wife vs Davis,* 10 Ga. at pages 410, 411, the Supreme Court of Georgia held in part as follows: "* * * it is unquestionably the right and duty of counsel to bring to the view of the court, for its determination, any point of law, which properly springs out of the cause, and which they may think important for the interests of their clients. They are in court for that purpose; they are bound to observe closely, to labor diligently, and to know thoroughly, in order that they may secure the determination of the rights of their client, according to law. The beautiful theory of a trial is this: both sides are represented by counsel, that their rights may be settled, not by art or chicane, or the tricks of the orator, but according to the law. It is, therefore, the duty of counsel to present to the court the points which he conceives are in favor of his client; AND IT IS HIS RIGHT TO BE HEARD IN ARGUMENT TO SUSTAIN THEM; and when presented, IT IS THE DUTY OF THE COURT TO PASS UPON THEM if they grow out of the case. * * * As officers of the court, the duties of counsel are not in conflict with those which devolve upon him as the representative of a party. They are the friends of the court, enlisted with him in the sublime work of discovering truth, and dealing out justice between man and man. * * * Whilst judgment belongs alone to the Judge—ENLIGHTENMENT IS THE PROVINCE OF THE LAWYER, and I apprehend that no Judge can be found so presumptuously vain, or so flagrantly unjust, as not to recognize, and that too with grateful emotions, the aid which he derives, in the discharge of duties more solemn than belong to any

other functionary, from an able bar. * * * It is the duty of the Judge to enforce the laws of the state, made in accordance with the State and Federal Constitutions—the whole law, as it applies, in his judgment, to the cases which come before him. He has no right and no power to withhold the application of one single principle of law, to a single case over which he has jurisdiction; he has no dispensation justifying or excusing an omission to apply the law. * * *" (Capitals added).

Petitioners alleged in their petition in the trial court that they desired to contest the result of the special election of June 16, 1965 in Metropolitan Atlanta as it related to the referendum variously worded in the various areas affected thereby but which directly related to the question of participation in the Metropolitan Atlanta Rapid Transit Authority Act of 1965 on the grounds that certain irregularities were committed by the election officials sufficient to change or place in doubt the result of the election, consisting of illegal votes received and legal votes rejected at the polls, and setting forth the particulars in which they claimed said irregularities were practiced. They alleged that the referendum of June 16, 1965, insofar as the City of Atlanta and County of Fulton were concerned, was held in violation of Article VII, Section VII, Paragraph I of the Constitution of Georgia prohibiting "special registration" for the purpose of incurring new debt; that any vote "to participate" or to "participate further" in the authority aforesaid was, in fact, a vote to incur debt and that special voter registrations were effected for the purpose of voting in said referendum within the City of Atlanta and Fulton County and that the said referendum was, therefore, void and illegal.

Petitioners alleged that the Legislature of Georgia made and changed election precincts in violation of Article III, Section VII, Paragraph XVII of the Georgia Constitution, causing large numbers of voters sufficient to change the result of the election of June 16, 1965 in the City of Atlanta and Fulton County to be deprived of their right to vote.

Petitioners alleged in effect and in substance in their petition in the Superior Court of Fulton County, Georgia, that the referendum election of June 16, 1965 held in Metropolitan Atlanta and especially in the City of Atlanta and Fulton County, Georgia, was void because the officials in charge of said election violated many specified mandatory provisions of law governing said election which would have changed the result and which were applied to other such elections in like circumstances and similar situations, and that the petitioners were thereby deprived of their liberty and property without due process of law and equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in said petition. (R. 46, 82, 93).

Petitioners alleged in effect and in substance that the Seventeenth Amendment of the Constitution of Georgia, under which the Metropolitan Atlanta Rapid Transit Authority Act was enacted and the referendum election of June 16, 1965 was held, is void and deprives them of their liberty and property without due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in that it was not published in the manner required by Article XIII, Sec. I of the Constitution of Georgia applied to other amendments to said constitution, and em-

powers the General Assembly of Georgia to exempt the Metropolitan Atlanta Rapid Transit Authority and its property, acts, activities, income and obligations and interest thereon from any tax obligations and from regulation by any agency or commission of Georgia; to levy taxes without limit, even to the extent of confiscation of the property of petitioners; and to exempt said Authority from any existing provision of or amendment to the Constitution of Georgia, or any general or special law heretofore enacted, and in that it authorizes the General Assembly to exercise the authority granted to it in said Amendment XVII by "general, special or local laws without regard to uniformity" in violation of all applicable and controlling provisions of the Constitution of Georgia applied to other persons and corporations in like circumstances and similar situations, and especially Article I, Section I, Paragraphs I, II, III, IV, XVII, XXI, XXIII, XXV, Article V, Section I, Paragraph I, and Article VI, Section I, Paragraph I, Article VII, Section I, Paragraphs I, II, III; Section II, Paragraph I; and Section VII, Paragraph I of the Constitution of Georgia. (R. 4, 46, 82, 93).

Petitioners alleged in effect and in substance in their petition in the Superior Court of Fulton County, Georgia, that the Metropolitan Atlanta Rapid Transit Authority Act of 1965 deprives them of their liberty and property without due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in that it authorizes said Authority to lease the rapid transit system to private parties and to exempt the property so leased, both real and personal, and the acts, activities and income of said private parties while operating said rapid transit

system from any tax or tax obligation, although no such authority to lease to private parties or to exempt them from taxation is contained in Amendment XVII of the Constitution of Georgia under which said Act was enacted or elsewhere in said Constitution, and Article III, Section VII, Paragraph XVII of said Constitution provides that "The General Assembly shall have no power to grant corporate powers and privileges to private companies;" and in that it authorizes the Authority to borrow money as may be necessary for the purposes of the Authority and to issue negotiable revenue bonds of the Authority for the purpose of paying all or a part of the cost of a rapid transit project or projects, the estimated cost of the construction of said initial transit project being over ONE BILLION DOLLARS; in that it exempts the Authority from any regulation by the Public Service Commission of Georgia, except that when any proposed action of the Authority, or any local government on behalf of the Authority, may place a public utility, railroad or public service corporation in violation of the requirements of the Commission, or create the need for collaboration with respect to compliance with the requirements of the Commission, the Authority shall obtain the Commission's cooperation and approval of the proposed action; and in that the said Act deprives petitioners of the benefit and protection of all applicable and controlling provisions of the Constitution of Georgia granted and applied to other persons and corporations in like circumstances and similar situations, and especially Article I, Section I, Paragraphs I, II, III, IV, XVII, XXI, XXIII, XXV; Article V, Section I, Paragraph I; Article VI, Section I, Paragraph I, and Article VII, Section I, Paragraphs I, II, III; Section II, Par. I; Section

VII, Par. I of the Constitution of Georgia. (R. 4, 46, 82, 93).

Petitioners alleged in their said petition in the Superior Court that the said Seventeenth Amendment of the Georgia Constitution, the Metropolitan Atlanta Rapid Transit Authority Act enacted thereunder, and the referendum election of June 16, 1965 held in Metropolitan Atlanta as defined in said Act deprived petitioners of the effect of all the provisions of the Georgia Constitution and the law applicable to such a referendum election and which were applied to other such elections in like circumstances and similar situations and thereby deprived petitioners of due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. (R. 4, 46, 82, 93).

Petitioners vigorously urged all of said federal constitutional grounds before the Superior Court of Fulton County but it ignored them and dismissed petitioners' petition upon general demurrer as aforesaid. (R. 113).

Petitioners then appealed to the Supreme Court of Georgia, which had appellate jurisdiction of said case under the Georgia Constitution, and urged all of said federal constitutional questions in their Notice of Appeal and enumeration of errors. (R. 1). That court also ignored said federal constitutional grounds by dismissing from the Bench without a hearing and without an opportunity to be heard the appeal of petitioners, thereby depriving petitioners of due process of law and equal protection of the law, in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. (R. 132-3). Petitioners filed a timely motion for rehearing with accompanying affidavits, which were made a part thereof,

showing that petitioners' said appeal was arbitrarily and capriciously dismissed without a hearing and without an opportunity to be heard and contrary to its decisions in other cases in like circumstances and similar situations, and that they were thereby deprived of due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. The Supreme Court of Georgia denied said motion for rehearing on Nov. 29, 1965, without passing upon said federal constitutional grounds raised in said court or upon the federal constitutional grounds raised in the Superior Court of Fulton County, Georgia, and held that the affidavits attached to petitioners' said motion for rehearing and made a part thereof and filed with said motion constituted "no proper part of the motion for a rehearing" and directed and caused the Clerk of the Supreme Court of Georgia to detach the said affidavits from the motion and return them together with a copy of said order of November 29, 1965, to counsel for petitioners. (R. 156).

In the case of *Barrentine et al vs Griner et al and vice versa,* 205 Ga. 830, 55 S.E. 2nd 536, the Supreme Court of Georgia held: "Where mandatory provisions affecting validity of election are violated, equity court has authority to declare election void."

In the body of the decision in the Barrentine case the Supreme Court of Georgia held: "To hold that the action of an official in declaring the result of an election is conclusive and cannot be questioned in a court of equity, even where the official is clothed with no authority to hold the election because of a noncompliance with mandatory prerequisites, WOULD LEAD TO ABSURD RESULTS. For instance, in a special election on the

question of legalizing the sale of liquor, an Ordinary could, in disregard of all requirements, immediately, on his own initiative, call and hold a pretended election and announce that the county was 'wet' or 'dry'. Would the courts, in such a case, be powerless to act, and would they of necessity be compelled to announce to the public that the action of the Ordinary was conclusive, and the courts were without authority to declare the election void? WE THINK NOT." (Capitals added).

In *Whittle et al vs. Whitley, et al,* 202 Ga. 633, 44 S.E. 2nd 241, the Supreme Court of Georgia held that the statutory requirement of notice of call of special election on question of legalizing and taxing liquor is MANDATORY AND FAILURE TO COMPLY THEREWITH VITIATES THE ELECTION.

The verified petition of petitioners in this case shows that the officials in charge of the election of June 16, 1965 involved in the case at bar violated mandatory provisions of law affecting said election which had been applied to others in like circumstances and similar situations, thereby depriving petitioners of due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution.

In the case of *Latham et al vs. Fowler et al and vice versa,* 192 Ga. 686, 16 S.E. 2nd 591, the Supreme Court of Georgia held: "Where an equity court has acquired equitable jurisdiction, it will grant complete relief with respect to all matters to which the parties may be entitled under the pleadings and proof, even though such relief may include legal rights and remedies."

In the case of *Hughes et al vs. Griner, Ordinary,* 208 Ga. 47, 65 S.E. 2nd 24, the Supreme Court of Georgia,

speaking through Mr. Chief Justice Duckworth, held in part: "Failure to comply with mandatory prerequisites to the holding of a special election, such as filing a petition to call the election as provided by law or advertising the election as required by law, renders the election void and equity will take jurisdiction and so decree."

In the case of *Cox et al vs. Williams et al,* 216 Ga. 535, 117 S.E. 2nd 899, a proceeding was brought to have a referendum election declared void. The Superior Court of Clayton County, Georgia declared the election void, and the Supreme Court of Georgia held that the election was void because there were numerous violations of the election laws.

In the case of *King et al vs. County Board of Education of Richmond County et al,* 156 S.E. 710, 42 Ga. App. 634, the Court of Appeals of Georgia held in part: "It is the general rule that when the result of an election in any precinct has been shown to be so tainted with fraud that the truth cannot be deducible therefrom, the entire poll should be rejected. McCrary on Elections, page 569. * * * It is a further well recognized rule that a fraud committed by the officers holding an election, or with their knowledge and connivance, stands upon a different footing from fraud committed by other persons, and that in such former case a willful and deliberate fraud upon the ballot box, perpetrated by the officers of the election, even though not sufficient to affect the result, may destroy the integrity of the returns made by the managers, so as to deprive them of their standing as prima facie proof of the result of the election, and so as to require additional evidence to establish the result. McCrary on Elections, pages 574, 575.**"

In the case of *Lawrence et al vs. State Commission of Miss.*, 286 U.S. 276, 52 S. Ct. 556, this Court held that if the state constitution exacted a uniform application of a tax on the appellant and his competitors, his constitutional rights were denied as well by the refusal of the state court to decide the question as by an erroneous decision of it.

In the case of *Craig vs. Harney,* 331 U.S. 367, 67 S. Ct. 1249, this court held, "Where it is asserted that a person has been deprived by a state court of a fundamental right secured by federal constitution, an independent examination of the facts by the Supreme Court may be made."

In the case of *Brooklyn Savings Bank vs. O'Neil,* 65 S. Ct. 895, 324 U.S. 697, this court held, "Where state courts fail to pass on evidence or make findings of fact because under their respective views the facts referred to are immaterial, the Supreme Court is not relieved from duty of examining evidence for purpose of determining what facts reasonably might be and presumably would be found therefrom by the state courts."

This Court has uniformly held that the fundamental requisite of due process of law is the opportunity to be heard. *Mullane vs. Central Hanover Bank and Trust Co. et al,* 339 U.S. 306, 70 S. Ct. 652; *Gonzales vs. U.S.,* 348 U.S. 407, 85 S. Ct. 409, and *In Re Oliver,* 333 U.S. 257, 68 S. Ct. 499.

The following criticism of decisions of this Court by Mr. Chief Justice Duckworth in *Sims vs. State,* 144 S.E. 2nd 103, ____ Ga. ____, is applicable to the arbitrary and capricious decision of the Supreme Court of Georgia in this case in dismissing petitioners' appeal without a hearing or opportunity to be heard, thereby depriving

petitioners of due process of law and equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution as well as Article I, Section I, Paragraphs II and III of the Georgia Constitution in the particulars shown by this petition:

> "We want to do justice and protect the accused in all his rights and we know Georgia law concerning confessions does this, but we simply are finding it frustrating and exceedingly difficult to do this when confronted constantly with a new and strange rule with no basis of law but established by a majority of one of the Supreme Court. UNLESS THAT COURT BECOMES WILLING TO ABIDE BY ITS OWN DECISIONS, AND RESPECT STATE LAWS, WE WILL SOON FIND STATE COURTS UNABLE TO LONGER FUNCTION. *****
>
> "We yield to no living men in our appreciation of and highest respect for the Supreme Court as a vital part of our Government and its proper supremacy over all courts, including this one. But if those occupying it will not uphold State procedure law that is constitutional and follow their own decisions sustaining those laws, chaos will reign in the lower courts of America." (Capitals added).

This petition and the record before this court in this case show beyond question that petitioners timely and properly raised substantial federal constitutional grounds in their verified petition in the Superior Court of Fulton County, Georgia and in their appeal to the Supreme Court of Georgia; that their petition was dismissed by said state trial court without a trial and without passing upon said federal grounds; and that their appeal to the

Supreme Court of Georgia was arbitrarily and capriciously dismissed by said court from the bench without a hearing or opportunity to be heard, all in violation of Section I of the Fourteenth Amendment of the U. S. Constitution providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The record before the court in this case shows that petitioners have been deprived of all of said fundamental federal constitutional rights without due process of law and without equal protection of the laws in violation of Section I of the Fourteenth Amendment of the U. S. Constitution.

WHEREFORE, petitioners urge that they are entitled as a matter of absolute federal constitutional right under Section I of the Fourteenth Amendment of the U. S. Constitution to the grant of the writ of certiorari to the Supreme Court of Georgia and reversal of its arbitrary, capricious, and unconstitutional decision dismissing their appeal to that court without a hearing or opportunity to be heard and thereby depriving them of their liberty and property without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in their petition in the Superior Court of Fulton County, Georgia, their appeal to the Supreme Court of Georgia, and in this petition for certiorari.

Petitioners pray and urge that this Court issue an order requiring the Supreme Court of Georgia to restore

to its file in this case the affidavits which it arbitrarily and capriciously detached from petitioners' motion for rehearing and returned to their counsel, so said affidavits can be certified by the Clerk of that Court with the rest of the record material and essential to a proper consideration of this petition, for transmission to this Court, and that the writ of certiorari issue to that Court in accordance with the law.

Respectfully submitted,

G. SEALS AIKEN,
Attorney for Petitioners

Suite 1409-10 Candler Bldg.,
Atlanta, Georgia 30303

ACKNOWLEDGMENT OF SERVICE

Service is hereby acknowledged and copy received of the foregoing petition for certiorari and appendix thereto.

This the_____day of February, 1966.

Counsel for Defendants in
Certiorari

Office-Supreme Court, U.S.
FILED
FEB 1 51966
JOHN F. DAVIS, CLERK

APPENDIX

to the

PETITION FOR THE WRIT OF CERTIORARI

to the

SUPREME COURT OF GEORGIA IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1965, No. 1021

In the Case of J. Vernon Yost et al, Petitioners, vs. Hon. Eugene Gunby, Ordinary of Fulton County, et al, Defendants.

TO THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1965

NO._____

J. VERNON YOST ET AL

vs.

HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL

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Appendix 1

DECISION OF THE SUPREME COURT OF GEORGIA OF NOV. 9, 1965

Decided: Nov. 9, 1965

SUPREME COURT OF GEORGIA. No. 516 23182. YOST et al. v. GUNBY, Ordinary, et al.

QUILLIAN, Justice. In this case the appellants filed their enumeration of errors 19 days after the appeal was docketed in this court. Hence, the case is controlled by Stanford v. Evans, Reed and Williams, 221 Ga. ___ (—SE 2nd—), Case No. 23160, which held that an enumeration of errors filed more than 15 days after the appeal was docketed in this court was not timely. Appeal dismissed. All the Justices concur, except Mobley, J., not participating for providential cause.

JUDGMENT OF SUPREME COURT OF GEORGIA OF NOV. 9, 1965 IN ABOVE STATED CASE.

23182

SUPREME COURT OF GEORGIA

Atlanta, November 9, 1965

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al.

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the appeal be dismissed. All the Justices concur except Mobley, J., not participating for providential cause.

Appendix 2

ORDER OF THE SUPREME COURT OF GEORGIA OF NOV. 29, 1965 ON PETITIONERS' MOTION FOR REHEARING.

23182

SUPREME COURT OF GEORGIA

Atlanta, November 29, 1965.

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

The affidavits by G. Seals Aiken, Benjamin D. Garner and George H. Keeler attached to the said motion and purportedly in support thereof, constitute no proper part of the motion for a rehearing; and therefore the clerk of this court is hereby directed to detach the said affidavits from the motion and return them together with a copy of this order to counsel for movants. Mobley and Grice, J.J., not participating.

AMENDMENT XVII OF THE CONSTITUTION OF GEORGIA

"ARTICLE XVII

Public Transportation of Passengers for Hire

"Section I

Public Transportation of Passengers for Hire in the Metropolitan Area of Atlanta

"Paragraph I. The acquisition, establishment, operation or administration of a system of public transporta-

tion of passengers for hire within the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, is an essential governmental function and a public purpose for which the powers of taxation and eminent domain may be exercised and public funds of said counties and municipality expended.

"Paragraph II. The General Assembly may create a public corporation or authority as an instrumentality of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, or any one or any combination thereof, to perform the aforesaid function, to have the power of eminent domain, the power to borrow money and issue obligations payable from its revenues, and such other powers as may be necessary or convenient for the accomplishment of the aforesaid function and purpose.

"Paragraph III. The General Assembly may provide that such public corporation or authority, as an instrumentality of the participating counties and municipality, its property, acts, activities, income and obligations and the interest thereon, shall be exempt from any tax obligations and from regulation by any agency or commission of the State.

"Paragraph IV. The General Assembly may authorize the City of Atlanta, and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett to contract with such public corporation or authority for the performance of the aforesaid function and purpose; to pay for the public transportation services and facilities contracted for, including the payment of the principal and interest on any obligations issued by such public corporation or author-

ity in order to acquire the necessary facilities and property therefor and in connection therewith to establish and maintain reasonable reserves; to levy taxes to the extent necessary to fulfill the obligation incurred in such contracts; and to convey to such public corporation or authority property or facilities, or render services, which may be useful to the establishment, operation or administration of a public transportation system within the aforesaid metropolitan area; provided that no county shall have the power to levy any tax on any subject of taxation situated within the territorial limits of any incorporated municipality which has a contract with said public corporation or authority and is itself levying a tax for that purpose.

"Paragraph V. The provisions of this Article shall be liberally construed to effectuate its purpose and shall not be limited or restricted by any existing provision of or amendment to this Constitution, or any general or special law heretofore enacted, and the authority granted by this Article to the General Assembly may be exercised by general, special or local laws without regard to uniformity.

"Section 2. When the above proposed amendment to the Constitution shall have been agreed to by two-thirds of the members elected to each of the two branches of the General Assembly, and the same has been entered on their journals with the 'Ayes' and 'Nays' taken thereon, such proposed amendment shall be published and submitted as provided in Article XIII, Section I, Paragraph I of the Constitution of Georgia of 1945, as amended.

"The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"'For ratification of amendment to the Constitution so as to declare the acquisition, establishment, operation and administration of a system of public transportation of passengers for hire in the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett to be an essential governmental function and a public purpose and to authorize the creation of a public corporation or authority for such purpose.

"'Against ratification of amendment to the Constitution so as to declare the acquisition, establishment, operation and administration of a system of public transportation of passengers for hire in the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett to be an essential governmental function and a public purpose and to authorize the creation of a public corporation or authority for such purpose.'

"All persons desiring to vote in favor of adopting the proposed amendment shall vote for ratification of the amendment, and all persons desiring to vote against the adoption of the proposed amendment shall vote against ratification.

"If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this State. The returns of the election shall be made in like manner as returns for elections for members of the General Assembly, and it shall be the duty of the Secretary of State to ascertain the result and certify the result to the Governor, who shall issue his proclamation thereon."

Appendix 6

PROVISIONS OF GEORGIA CONSTITUTION CITED IN PETITION FOR CERTIORARI.

ARTICLE I

BILL OF RIGHTS

SECTION I

Ga. Code Section 2-101. "Paragraph I. Origin and foundation of government. All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and, at all times, amenable to them."

Ga. Code Section 2-102. "Paragraph II. Protection the duty of government. Protection to person and property is the paramount duty of government, and shall be impartial and complete."

Ga. Code Section 2-103. "Paragraph III. Life, liberty, and property. No person shall be deprived of life, liberty, or property, except by due process of law."

Ga. Code Section 2-104. "Paragraph IV. Right to the courts. No person shall be deprived of the right to prosecute or defend his own cause in any of the courts of this State, in person, by attorney, or both."

Ga. Code Section 2-117. "Paragraph XVII. Slavery and involuntary servitude. There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

Ga. Code Section 2-121. "Paragraph XXI. Imprisonment for debt. There shall be no imprisonment for debt."

Appendix 7

Ga. Code Section 2-123. "Paragraph XXIII. Legislative, judicial, and executive powers, separate. The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duties of one, shall, at the same time, exercise the functions of either of the others, except as herein provided."

Ga. Code Section 2-125. "Paragraph XXV. Citizens, protection of. All citizens of the United States, resident in this State, are hereby declared citizens of this State, and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges and immunities due to such citizenship."

SECTION IV

Ga. Code Section 2-401. "Paragraph I. General laws; uniform operation; how varied. — Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights, shall be varied in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract, is capable of such consent."

SECTION V

Ga. Code Section 2-501. "Paragraph I. State rights. — The people of this State have the inherent, sole and exclusive right of regulating their internal government and the police thereof, and of altering and abolishing their Constitution whenever it may be necessary to their safety and happiness."

Appendix 8

ARTICLE III

Legislative Department

SECTION I.

Legislative Power, Where Vested.

Ga. Code Section 2-1301. "Paragraph I. Power vested in general assembly. The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives."

SECTION VII.

Ga. Code Section 2-1916. "Paragraph XVI. Statutes and sections of Code, how amended or repealed. No law, or section of the Code, shall be amended or repealed by mere reference to its title, or to the number of the section of the Code, but the amending, or repealing act, shall distinctly describe the law to be amended or repealed, as well as the alteration to be made."

Ga. Code Section 2-1917. "Paragraph XVII. Corporate powers, how granted. The General Assembly shall have no power to grant corporate powers and privileges to private companies, to make or change election precincts * * *."

ARTICLE V.

Executive Department.

Section I.

Ga. Code Section 2-3001. "Paragraph I. * * The executive power shall be vested in a Governor, who shall hold his office during the term of four years, and until his successor shall be chosen and qualified. * * *"

Appendix 9

ARTICLE VI

Judiciary

SECTION I.

Ga. Code Section 2-3601. "Paragraph I. Courts enumerated. The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace, Notaries Public who are ex-officio Justices of the Peace, and such other Courts as have been or may be established by law."

ARTICLE VII

Finance, Taxation, and Public Debt.

SECTION I.

Power of Taxation; Exemptions.

Ga. Code Annotated Section 2-5501 (Pocket Parts). "Paragraph I. Taxation, a sovereign right; tax on corporations. The right of taxation is a sovereign right — inalienable, indestructible — is the life of the State, and rightfully belongs to the people in all Republican governments, and neither the General Assembly, nor any, nor all other departments of the Government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts, and all other acts, whatsoever, by said government, or any department thereof, to affect any of these purposes, shall be, and are hereby, declared to be null and void, for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant or contract, whatsoever, by the General Assembly.

"The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract, or grant to which the State shall be a party. * * *"

Ga. Code Annotated Section 2-5402 (Pocket Parts). "Paragraph II. Taxing power limited. 1. The General Assembly shall not by vote, resolution, or order grant any donation or gratuity in favor of any person, corporation or association. * * * 3. The levy of taxes on property for any one year by the General Assembly for all purposes, except to provide for repelling invasions, suppressing insurrections, or defending the State in time of war, shall not exceed one-fourth (1/4) mill on each dollar of the value of the property taxable in the State, provided, however, that until some other method permitted by the laws of the United States for the taxation of national banking associations or corporations is enacted by the General Assembly for the taxation of the shares of stock of banking corporations and other monied capital coming into competition with such banking corporations, such property may be taxed at a rate not exceeding five (5) mills on each dollar of the value thereof. * * *"

Ga. Code Annotated Section 2-5403 (Pocket Parts). "Paragraph III. Uniformity; classification of property. All taxes shall be levied and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. * * *"

SECTION II

Purposes and Method of Taxation.

Ga. Code Annotated Section 2-5501 (Pocket Parts). "Paragraph I. Taxation, how and for what purposes

exercised. — The powers of taxation over the whole State shall be exercised by the General Assembly for the following purposes only:

"1. For the support of the State Government and the public institutions.

"2. For educational purposes.

"3. To pay the principal and the interest on the public debt, and to provide a sinking fund therefor.

"4. To suppress insurrection, to repel invasion, and defend the State in time of war.

"5. To make provision for the payment of pensions to ex-Confederate soldiers and to the widows of Confederate soldiers who are unmarried.

"6. To construct and maintain State buildings and a system of State highways, airports, and docks.

"7. To make provision for the payment of old-age assistance to aged persons in need, and for the payment of assistance to the needy blind, and to dependent children and other welfare benefits; * * *

"7-A. In order to extend to the employees of the State, any department of the State, any State institution or political subdivisions of the State, and to the dependents and survivors of such employees, the basic protection accorded others by the old age and survivors insurance program embodied under the Social Security Act. * * *

"8. To advertise and promote the agricultural, industrial, historic, recreational and natural resources of the State of Georgia.

"9. For public health purposes. * * *"

Appendix 12

SECTION VII

Limitation on County and Municipal Debts.

Ga. Code Annotated Section 2-6001 (Pocket Parts): "Paragraph I. Debts of counties and cities. — The debt hereafter incurred by any county, municipal corporation or political division of this State except as in this Constitution provided for, shall never exceed seven per centum of the assessed value of all the taxable property therein, and no such county, municipality or division shall incur any new debt except for a temporary loan or loans, to supply casual deficiencies of revenue, not to exceed one-fifth of one per centum of the assessed value of the taxable property therein, without the assent of a majority of the qualified voters of the county, municipality or other political subdivision voting in an election for that purpose to be held as prescribed by law; and provided further that all laws, charter provisions and ordinances heretofore passed or enacted providing special registration of the voters of counties, municipal corporations and other political divisions of this State to pass upon the issuance of bonds by such counties, municipal corporations and other political divisions are hereby declared to be null and void; and the General Assembly shall hereafter have no power to pass or enact any law providing for such special registration, but the validity of any and all bond issues by such counties, municipal corporations or other political divisions made prior to January 1, 1945, shall not be affected hereby; provided, that any county or municipality of this State may accept and use funds granted by the Federal Government, or any agency thereof, to aid in financing the cost of architectural, engineering, economic investigations, studies, surveys, designs, plans, working drawings, specifications,

procedures, and other action preliminary to the construction of public works, and where the funds so used for the purposes specified are to be repaid within a period of ten years.

"Every county is hereby empowered to create debt, by way of borrowing from private individuals, firms, corporations, or partnerships, as well as from the State, for the purpose of paying the whole or part of the cost of property valuation and equalization programs for ad valorem tax purposes; to contract for the repayment thereof and to issue notes or other like instruments as evidence of the obligation to repay the debt so contracted without being subject to any limit as to amount of such debt so created and without the necessity of approval thereof by the qualified voters of that county; provided nevertheless that the debt shall be payable in one or more equal installments, one of which shall fall due at least each year, but which may fall due each month, the last of which shall mature not more than seven years from the date of creation and shall not bear interest in excess of five (5%) per cent per annum on unpaid principal; and a tax shall be levied on the taxable property of the county as may be needed to repay such debt so created; provided, however, that no county shall be empowered to create debt under the provisions of this paragraph for the purposes of a property valuation and equalization program until such program and all contracts to be entered into pursuant thereto shall have been approved by the State Revenue Commissioner, and until such county shall have entered into an agreement with the State Revenue Commissioner that such program shall be carried out in accordance with such rules and

regulations pertaining to such programs as may be promulgated by the Commissioner."

Ga. Code Section 2-6002. "Paragraph II. Levy of taxes to pay bonds. — Any county, municipal corporation or political division of this State which shall incur any bonded indebtedness under the provisions of this Constitution, shall at or before the time of so doing, provide for the assessment and collection of an annual tax sufficient in amount to pay the principal and interest of said debt, within thirty years from the date of the incurring of said indebtedness."

Ga. Code Section 2-6003. "Paragraph III. Additional debt authorized, when. — In addition to the debt authorized in Paragraph I of this section, to be created by any county, municipal corporation or political subdivision of this State, a debt may be incurred by any county, municipal corporation or political subdivision of this State, in excess of seven per centum of the assessed value of all the taxable property therein, upon the following conditions: Such additional debt, whether incurred at one or more times, shall not exceed in the aggregate, three per centum of the assessed value of all the taxable property in such county, municipality or political subdivision; such additional debt shall be payable in equal installments within the five years next succeeding the issuance of the evidences of such debt; there shall be levied by the governing authorities of such county, municipality or political subdivision prior to the issuance of such additional debt, a tax upon all of the taxable property within such county, municipality or political subdivision collectible annually, sufficient to pay in full the principal and interest of such additional debt when as due; such tax shall be in addition to and separate from

all other taxes levied by such taxing authorities, and the collections from such tax shall be kept separate and shall be held, used and applied solely for the payment of the principal and interest of such additional indebtedness; authority to create such additional indebtedness shall first have been authorized by the General Assembly; the creation of such additional indebtedness shall have been first authorized by a vote of the registered voters of such county, municipality or political subdivision at an election held for such purpose, pursuant to and in accordance with the provisions of this Constitution and of the then existing laws for the creation of a debt by counties, municipal corporations, and political subdivisions of this State, all of which provisions, including those for calling, advertising, holding and determining the result of, such election and the votes necessary to authorize the creation of an indebtedness, are hereby made applicable to an election held for the purpose of authorizing such additional indebtedness."

Appendix 16

Ga. Code Annotated Section 2-6004 (Pocket Parts). "Paragraph IV. Temporary loans authorized; conditions. In addition to the obligations hereinbefore allowed, each county, municipality, political subdivision of the State authorized to levy taxes, and county board of education, is given the authority to make temporary loans between January 1st and December 31st in each year to pay expenses for such year, upon the following conditions: The aggregate amount of all such loans of such county, municipality, political subdivision or county board of education outstanding at any one time shall not exceed 75 per cent of the total gross income of such

county, municipality, political subdivision or county board of education, from taxes collected by such county, municipality, political subdivision or county board of education in the last preceding year. Such loans shall be payable on or before December 31st of the calendar year in which such loan is made. No loan may be made in any year under the provisions of this paragraph when there is a loan then unpaid which was made in a prior year under the provisions of this paragraph. Each such loan shall be first authorized by resolution fixing the terms of such loan adopted by a majority vote of the governing body of such county, city, political subdivision or county board of education, at a meeting legally held, and such resolution shall appear upon the minutes of such meeting. No such county, municipality, subdivision or county board of education shall incur in any one calendar year, an aggregate of such temporary loans and other contracts or obligations for current expenses, in excess of the total anticipated revenue of such county, municipality, subdivision, or county board of education for such calendar year, or issue in one calendar year notes, warrants or other evidences of such indebtedness in a total amount in excess of such anticipated revenue for such year."

ARTICLE XII

Laws of General Operation of Force in State.

Section I.

Ga. Code Section 2-8001. "Paragraph I. Supreme law. The laws of general operation in this State are, first: As the Supreme Law: The Constitution of the United States, the laws of the United States in pursuance thereof * * * ."

Appendix 17

ARTICLE XIII

Amendments to the Constitution.

SECTION I.

Constitution Amended, How.

Ga. Code Annotated Section 2-8101 (Pocket Parts). "Paragraph I. Proposal by General Assembly; submission to people. An amendment to this Constitution may be proposed by a resolution in the Senate or the House of Representatives, and if the same shall be agreed to by two-thirds of the members elected to each branch of the General Assembly, such proposed amendment shall be entered on the journals of each branch with the Ayes and Nays taken thereon. Any proposed amendment may be repealed or amended by the same General Assembly, if done so at least two months prior to the date of the election at which such proposed amendment is to be submitted.

"The Governor, the Attorney General, and the Secretary of State shall meet and determine whether a proposed amendment is general, and if not general, shall determine what political subdivision or subdivisions are directly affected by such proposed amendment. If a proposed amendment is general, the Governor shall cause such proposed amendment to be published in full once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is submitted, in one newspaper of general circulation in each Congressional District of the State. If such proposed amendment is not general, the Governor shall cause such proposed amendment to be published in full in one newspaper of general circulation in each county in which the directly affected political

subdivision or subdivisions are located. In the event no such newspaper is located in such county, a newspaper in an adjoining county shall be used.

"Any proposed amendment which is general shall be submitted to the people of the entire State at the next general election at which members of the General Assembly are elected, and if ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment shall become a part of this Constitution. A proposed amendment which is not general shall only be submitted to the people of the political subdivision or subdivisions directly affected. The votes of the electors in each political subdivision affected shall be counted separately in determining whether such proposed amendment is ratified, and it must be ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon in each such political subdivision before it shall become a part of this Constitution. The General Assembly, in the resolution, shall state the language to be used in submitting the proposed amendment.

"When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately."

THE U. S. CONSTITUTION

ARTICLE IV

SECTION IV

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the Legislature, or of the executive (when the

Legislature cannot be convened), against domestic violence."

AMENDMENT XIII

"Paragraph I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

AMENDMENT XIV

"Paragraph I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

AFFIDAVITS ATTACHED TO, MADE A PART OF, AND FILED WITH PETITIONERS' MOTION FOR REHEARING WHICH THE SUPREME COURT OF GEORGIA DIRECTED AND CAUSED ITS CLERK TO DETACH AND RETURN TO PETITIONERS' COUNSEL:

Appendix 20

J. VERNON YOST ET AL,
Appellants
vs.
HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL,
Appellees

NO. 23182
IN SUPREME COURT
OF GEORGIA

AFFIDAVIT OF G. SEALS AIKEN AS ATTORNEY FOR APPELLANTS IN SUPPORT OF THEIR MOTION FOR REHEARING

GEORGIA, FULTON COUNTY:

Personally appeared before the undersigned attesting officer, G. Seals Aiken, who, after being duly sworn, deposes and says:

I am attorney at law for the appellants in this case. I argued this case in the trial court and also prepared the notice of appeal and the brief for appellants. On Sept. 28, 1965, within fifteen days from the date of docketing the case in this court, I applied to Mr. Chief Justice W. H. Duckworth of the Supreme Court of Georgia, for an extension of ten days time in addition to the fifteen days fixed by Rule 20 of this Court in which to file a brief. This application was granted by the Chief Justice with the request that I advise counsel for appellees that he had likewise granted them an extension of ten days time in which to file briefs for the appellees, which was done by me on Sept. 29, 1965.

I filed a brief and argument for appellants and also separately at the same time an enumeration of the er-

rors relied upon and simultaneously filed a copy of said enumeration of errors with the Clerk of the trial court. The brief and enumeration of errors were served upon counsel of record for the appellees prior to the filing of the same.

I was sent a trial calendar under date of Oct. 18, 1965 by the Clerk of the Supreme Court of Georgia showing this case was the fourth case set for argument beginning at 10:00 A.M. on Nov. 9, 1965. The case was called in its regular order about 10:55 A.M. for argument, and I appeared promptly before the court to argue the case in behalf of appellants. When I started to argue the case, Mr. Justice Quillian asked me when I filed an enumeration of errors relied upon. I stated I did not recall the exact date I filed it but that I knew I filed it at the same time I filed the brief and within the extension of time granted to me by the Chief Justice in which to file my brief. The Chief Justice then stated that the statute (referring to the Appellate Practice Act of 1965 as amended) required the enumeration of errors to be filed within fifteen days from the date of docketing the case; that it was mandatory; that this court was bound by it and could not extend the time for filing an enumeration of errors; that appellants' case would, therefore, have to be dismissed; and that it would be futile for me to argue the case and a waste of the time of the court as well as my time to do so. I then stated to the court that this point had not been raised by the appellees; that I had had no intimation that any such point would be raised; that I respectfully disagreed with the court in its statement that the statute required the enumeration of errors to be filed within a period of fifteen days from the docketing of the case and insisted that it only required

the enumeration of errors to be filed AT THE TIME THE BRIEF WAS FILED; that I did this exactly as required by said statute and the rules of this court; that, upon my request within fifteen days from the docketing of the case, Mr. Chief Justice Duckworth had very graciously granted me an extension of ten days additional time in which to file a brief for the appellants and the same extension of time for the appellees in which to file a brief; that I had filed said brief and the enumeration of errors at the time I filed my brief within said extension of ten days granted by the Chief Justice; that no statement was made to me by the Chief Justice at the time he granted the said extension of ten days in which to file a brief to the effect that the enumeration of errors would have to be filed within fifteen days from the docketing of the case; that nothing whatever was said about the enumeration of errors; that inasmuch as Section 14 of the statute (Ga. Laws 1965 page 243-4) expressly required that the enumeration of errors be filed "at the time the brief is filed in the Supreme Court," the extension of time for filing the brief automatically and necessarily included the same extension of time in which to file the enumeration of errors and that I had acted accordingly; that I could not have filed an enumeration of errors at the same time I filed the brief if I had filed the former within fifteen days from the docketing of the case because I filed the brief after said fifteen days but within the ten days extension granted by the Chief Justice. I thereupon urged the court to grant me a reasonable time in which to file a brief on said point raised for the first time by the court, and after a colloquy between the Chief Justice and counsel for the parties, between the Chief Justice and Associate Justices,

and between the Associate Justices and counsel for the parties, consuming approximately twenty three minutes, the Chief Justice stated I was granted ten days in which to file a brief on said point and that I would be permitted to argue the case on its merits subject to the filing of said brief, despite his prior statement that it would be futile for me to do so and a waste of the time of the court as well as my own time.

During the colloquy between the court and counsel as to whether or not I would be permitted to argue the case for the appellants, Mr. Huie stated in substance that counsel for the appellees had considered the point raised by the court as to whether the enumeration of errors had to be filed within fifteen days from the docketing of the case. In this connection, this court's attention is invited to Rule 35 of this court, providing, "Notice of a motion to dismiss and of the grounds thereof should be given in writing to counsel for the appellant five days before the case is called for argument, service thereof to be made and shown as required in the service of briefs." It would appear, therefore, that counsel for appellees realized it would be illegal to dismiss appellants' appeal on said ground.

I thereupon started to argue the case and inquired of the court as to the time I had in which to argue and was informed that the time which had been consumed in the colloquy as aforesaid as to whether I would be permitted to argue the case at all, consisting of approximately twenty three minutes, was charged against me and that I only had the remainder of thirty minutes in which to argue the case.

Within about two minutes from the time I started arguing the case, I referred to the fact that the capital

cost of construction of the proposed project would amount to more than a billion dollars according to the evidence furnished me, and I was interrupted by Mr. Justice Quillian with a statement to the effect that it didn't make any difference whether the cost was ten or fifteen cents or a billion dollars, that the court was only interested in the law and constitutionality of the matters under consideration and that the law and the constitution would have the same effect regardless of the amount. At this point, I asked the court to grant permission to Mr. Benjamin D. Garner, as a party appellant, to consume the remainder of the time allowed for argument in his own behalf by reason of his study and knowledge of inter-dependence of the various engineering reports and the laws pertaining thereto. The Chief Justice then asked me if Mr. Garner was a lawyer and I told him that he was not admitted to the Bar of this State. He thereupon stated that he would not permit Mr. Garner to make any argument. I then invited the court's attention to the fact that Article I, Section I, Paragraph 4 of the Constitution of Georgia expressly provided that no person shall be deprived of the right to prosecute or defend his own cause in any of the courts of this state, in person, by attorney, or both. The Chief Justice nevertheless adhered to his ruling in denying Mr. Garner his said constitutional right as a party appellant to argue said case in person. The Chief Justice stated if Mr. Garner were not represented by counsel that he would permit him to argue the case as a party. I then repeated the substance of the said constitutional provision. The Chief Justice, however, adhered to his ruling denying Mr. Garner his said right to argue his case under said provision of the Georgia Constitution.

I then stated I would reserve the remainder of my time for rebuttal of any argument which might be made by counsel for appellees.

Mr. Stell Huie thereupon arose and proceeded to make an argument for appellees, and stated in substance that his clients had hoped to have the constitutional questions raised by appellants decided by this court. The Chief Justice then informed Mr. Huie that he had his case won because the court was going to dismiss the appeal on the ground that the appellants had not filed an enumeration of errors within the time provided by the statute, but that if he talked too much he might change the mind of the court and they might decide against him. Mr. Huie then sat down.

When Mr. Huie sat down, I arose and stated that I had assigned error in this case upon grave State and Federal Constitutional questions of great public concern and appealed to the court to maturely consider said errors upon full argument as required under its decision in the case of *Central of Ga. Rwy. Co. vs. Yesbik,* 146 Ga. 620, 91 S.E. 873, because appellants desired and intended, in the event this court should decide adversely to them, to appeal to the Supreme Court of the United States. I was cut off at that point by a statement from the Chief Justice to the effect that "the case is dismissed." I then invited the attention of the court to the fact that I had been granted first ten days in which to file a brief on the point raised by the court, which was later reduced to five days, and urged the court to allow me to file said brief instead of dismissing the case from the bench without hearing oral or written argument on said point, but the Chief Justice, with the consent of the other Justices sitting with him, announced that the case

was dismissed and the permission previously granted to file a brief first within ten days and later within five days was revoked and I was not permitted to make any argument in behalf of appellants.

In the case of *Mallard vs. Mallard,* No. 23151, this court on Oct. 19, 1965, took jurisdiction and reversed the trial court without even mentioning the fact that the case was docketed on Aug. 20, 1965 and the enumeration of errors was not filed until Sept. 15, 1965, or twenty six days after the date of docketing the case, and no extension of time for filing the brief was requested or obtained.

In the case of *Stanford vs. Evans, Reed and Williams,* 221 Ga. ____ (____SE 2nd ____), Case No. 23160, no extension of time was sought or granted for the filing of the brief or enumeration of errors in that case, and the latter was not filed until seventeen days after the case was docketed in this court.

No extension of time was sought or granted for the filing of a brief or enumeration of errors in any of the cases in which this court held that the enumeration of errors was not filed in time if not filed within fifteen days from the date of the docketing of the case, except in the case at bar, where the enumeration of errors was filed simultaneously with the brief as required by law within the extension of time allowed by this court in which to file said brief.

This affidavit is made as a part of the record in this case in this court for the consideration of the court in passing upon Appellants' motion for rehearing and for the consideration of the U. S. Supreme Court on appeal or certiorari in the event this Court should fail to

reverse its dismissal of this case or upon reversal of said dismissal, should decide adversely to appellants on the grounds of error urged by them in their appeal to this court, and for such other and further purposes as may be proper under the law and the record in this case.

s/s G. SEALS AIKEN

(G. SEALS AIKEN)

Sworn to and subscribed before me on this the 17th day of November, 1965.

SEAL

s/s E. H. STANFORD

NOTARY PUBLIC, FULTON COUNTY, GEORGIA

Notary Public, Georgia, State at Large. My Commission Expires Sept. 11, 1966.

APPELLANTS' EXHIBIT A

Appendix 28

J. VERNON YOST ET AL,
Appellants
vs.
HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL,
Appellees

NO. 23182
IN SUPREME COURT
OF GEORGIA

AFFIDAVIT OF BENJAMIN D. GARNER, PARTY APPELLANT, IN SUPPORT OF APPELLANTS' MOTION FOR REHEARING

GEORGIA, FULTON COUNTY:

Personally appeared before the undersigned attesting officer Benjamin D. Garner, who, after being duly sworn, deposes and says: I was a party plaintiff in Fulton Superior Court and I am a party appellant in this court in the above stated case.

On Tuesday, November 9, 1965, at or slightly before 11:00 o'clock A.M., the above styled case was called for argument by the Supreme Court of Georgia. G. Seals Aiken appeared as attorney at law for Appellants, and I appeared for myself and in my own behalf. Mr. Aiken and I had agreed prior to the call of the case that he would open the argument for Appellants and would consume approximately fifteen minutes and reserve the last fifteen minutes of the allotted half hour to me for rebuttal of such argument as the attorneys for the appellees might make.

Upon rising to present his argument of the case on its merits, Mr. Aiken was immediately questioned by Mr.

Justice Quillian as to the date upon which he had filed the enumeration of errors for the appellants. Mr. Aiken said he didn't remember the exact date but that he had done so in the manner provided by law and concurrently with the filing of his brief for appellants and within the extension of time allowed for filing said brief by Mr. Chief Justice Duckworth. Mr. Chief Justice Duckworth thereupon stated to counsel for appellants that it would be futile for him to argue the case because the court would have to dismiss the case because the statute required the enumeration of errors to be filed within fifteen days from the date the case was docketed; that this was not done in this case; that neither he nor the court had any discretion to extend said time of fifteen days fixed by the statute for the filing of the enumeration of errors; and that his granting an extension of ten days in which to file a brief did not carry with it any extension of time in which to file the enumeration of errors. Chief Justice Duckworth stated in effect that although the result of such a decision may have ridiculous results, it was nevertheless binding under the statute for the court to make it; he thus implied that it was not an unwarranted intrusion by the legislature upon the inherent right of the court to conduct its own business; that the court had invariably held that either the Supreme Court of Georgia or the Chief Justice thereof had sufficient authority to grant extension of time for the filing of briefs but no authority and no latitude whatever under the Appellate Practice Act of 1965 as amended to grant any extension of time for the filing of an enumeration of errors relied upon. He said the statute does permit, in fact requires, this court to dismiss the case where the enumeration of

errors is not filed within fifteen days from the date the case is docketed.

Mr. Aiken stated that no such point had been made by counsel for the appellees and that he did not know that any such point would be raised by the Supreme Court and requested permission to file a brief on said point and to argue the case on its merits subject to the filing of said brief. The Chief Justice thereupon granted Mr. Aiken five days in which to file said brief. Mr. Aiken then asked for more time in view of the importance of the question raised, and upon the suggestion of Mr. Justice Quillian, the Chief Justice granted Mr. Aiken ten days in which to file said brief.

The granting of ten days in which to file a brief (on the point raised by the court as to whether appellants' enumeration of errors had been filed within the time required by law) was done despite the fact that the Chief Justice had stated previously that it would be futile for Mr. Aiken to argue the case and a waste of the court's time as well as his time because he said the statute required the enumeration of errors to be filed within fifteen days from the date of the docketing of the case and that by reason of the failure to do so for any cause, the court nevertheless was required to dismiss the case under the statute which it was bound by.

No question was raised by counsel for appellees as to the time of filing the enumeration of errors for appellants.

At the expiration of the colloquy referred to above, consisting of twenty-three minutes, Mr. Aiken inquired of the court as to how much time he had and he was informed by the court that the time consumed in the

colloquy as to whether or not he would be permitted to argue the case was charged to him as counsel for the appellants and that he, therefore, had only the remainder of thirty minutes left. At this point Mr. Aiken attempted to argue the merits of the case and within the course of about two minutes he mentioned the fact that the capital cost of construction of the projected rapid transit system would be in excess of one billion dollars. He was thereupon interrupted by Mr. Justice Quillian with a statement that the cost of the project did not interest the court, whether it be fifteen cents or one billion dollars, and that the court was only interested in the constitutionality of the various aspects of the case then under consideration. Affiant respectfully states that the capital cost of the construction of this project is such that it cannot be accomplished within the constitutional limitations imposed as to indebtedness and that no intelligent decision can be reached concerning the constitutionality of some of the aspects of the case without a consideration of its cost.

In view of Article I, Section I, Paragraph 2 of the Constitution of the State of Georgia, affiant affirmatively states that any attempt to render a decision as to the constitutionality of the aspects of this case without considering the cost aforesaid is a violation in one stroke of the 14th Amendment of the U. S. Constitution as it relates to due process of law and to equal protection of the law, and to Article I, Section I, Paragraph 2 of the Constitution of Georgia and to Article I, Section I, Paragraph 3 of the State Constitution which also provides that no person shall be deprived of life, liberty or property except by due process of law, Article I, Section 4, Paragraph 2 of the Georgia Constitution which provides

that legislative acts in violation of this constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them.

At this point Mr. Aiken attempted to present me as a party appellant to argue the case on my own behalf in view of my study and experience pertaining to the Metropolitan Atlanta Rapid Transit Authority Act, the Parsons, Brinckerhoff, Quade and Douglas Engineering Report, the plan of implementation submitted concurrently with said report, the Urban Mass Rapid Transit Authority Act known as Public Law 88-365 of the 88th Congress, and the Inter-dependence of one upon the other. The Chief Justice then asked Mr. Aiken if I were a lawyer and he told him I was not admitted to the Bar of this State but that I was a party appellant and that under the express provisions of Article I, Section 1, Paragraph 4 of the Constitution of Georgia, I had a right to prosecute or defend my own cause in any of the courts of this state, in person, by attorney, or both. The Chief Justice nevertheless refused to allow me to make any argument whatsoever in my own behalf. The Chief Justice stated he would permit me to argue the case if I were not represented by counsel but he would not do so inasmuch as Mr. Aiken was representing all of the appellants. Mr. Aiken then sat down and said that he had better save the remainder of his time for rebuttal of such argument as might be made by counsel for appellees.

Mr. Stell Huie then got up and started to make an argument, at the outset of which he remarked that his clients and the other parties at interest had hoped for a decision on the constitutional questions raised. At this point Mr. Chief Justice Duckworth informed him that he had his case won because the court intended to dis-

miss the appeal on the ground that the enumeration of errors had not been filed in time, but that if he talked too much he might change the mind of the court and force it to decide against him. At some point in a colloquy between the Chief Justice and Mr. Huie, the former told the latter that he should tell his partner to be more careful in drafting legislation, referring to Mr. Jack Etheridge, who was present in court as one of counsel for appellees and who actively supported the Metropolitan Atlanta Rapid Transit Authority Act as a member of the State Legislature of Georgia.

During the colloquy between the court and counsel as to whether or not Mr. Aiken would be permitted to argue the case for the appellants, Mr. Huie stated in substance that counsel for the appellees had considered the point raised by the court as to whether the enumeration of errors had to be filed within fifteen days from the docketing of the case. In this connection, this court's attention is invited to its Rule 35 providing, "Notice of a motion to dismiss and of the grounds thereof should be given in writing to counsel for the appellant five days before the case is called for argument, service thereof to be made and shown as required in the service of briefs . . ." It would appear, therefore, that counsel for appellees realized it would be illegal to dismiss appellants' appeal on said grounds.

(Mr. Aiken had indicated to me prior to the call of the case for argument that he expected to file a motion for rehearing if the court should decide against the appellants in order to avoid the necessity of carrying the case to the U. S. Supreme Court as the appellants, including this affiant, had indicated to him their desire and intention so to do should the case be decided ad-

versely to them.) Mr. Aiken then got up and urged the court to hear full argument in view of the grave State and Federal constitutional questions raised of great public concern and to maturely consider the case upon full argument as required by the decision of this court in the case of *Central of Ga. Rwy. Co. vs. Yesbik,* 146 Ga. 620, 91 S.E. 873, and the decisions of the U. S. Supreme Court therein cited, as the appellants desired and intended to appeal to the U. S. Supreme Court if this court decided adversely to them. At the mention by Mr. Aiken of the U. S. Supreme Court, the Chief Justice interrupted Mr. Aiken and stated in substance, if you are going to take the case there, we'll decide the case against you now and dismiss it, and turning to the other Justices sitting on the bench with him, he got or assumed their assent to do so and announced from the bench that the case was dismissed, thereby preventing Mr. Aiken from arguing the case. Mr. Aiken thereupon stated to the court that he simply mentioned the desire and intention of the appellants to carry the case to the U. S. Supreme Court in the event of an adverse decision to emphasize the importance of the grave Federal and State constitutional questions presented of great public concern. Mr. Aiken also reminded the court of the fact that it had previously granted him time in which to file a brief on the point as to whether or not the enumeration of errors had been filed in time and urged the court to allow him to file said brief, but the Chief Justice stated that he had withdrawn the permission previously granted him to file a brief or to make any argument and announced again that the case was dismissed.

By reason of the court's failure to resolve the constitutional questions raised, such bonds and/or equipment

trust certificates as may be sold by the Rapid Transit Authority and such general obligation bonds as may be issued by any of the potentially contracting governments to finance their participation will, in all probability, and as is usually the case, be sold at the limit of the legal rate of interest provided by law, which in this case is six per cent. per annum, instead of an interest rate of slightly more than three per cent., which the City of Atlanta now enjoys. As pointed out on page 100 of the Parsons, Brinckerhoff, Quade and Douglas Engineering Report, "Approximately one hundred million dollars could be saved either by reduction of the interest rate from 4.5 per cent. to 3.0 per cent. or by shortening the maturities by one third." It follows that if one hundred million dollars could be saved by reducing the interest rate from 4.5 per cent. to 3.0 per cent., then two hundred million dollars could be saved by reducing it from six per cent. to three per cent.

The City of San Francisco at the present time is offering their bonds for a similar rapid transit system project at six per cent. per annum.

This affidavit is made as a part of the record in this case in this court for the consideration of the court in passing upon Appellants' motion for rehearing and for the consideration of the U. S. Supreme Court on appeal or certiorari in the event this court should fail to reverse its dismissal of this case or upon reversal of said dismissal, should decide adversely to appellants on the grounds of error urged by them in their appeal to this

court, and for such other and further purposes as may be proper under the law and the record in this case.

s/s BENJAMIN D. GARNER

(BENJAMIN D. GARNER)

Sworn to and subscribed before me
on this the 16th day of November, 1965.

s/s G. SEALS AIKEN

Notary Public, Fulton County, Georgia.

APPELLANTS' EXHIBIT B

GEORGIA, COBB COUNTY

I, George H. Keeler, having appeared before the undersigned officer duly authorized to administer oaths and having been duly sworn, do solemnly swear that the statements herein are true and correct.

I am 60 years old; I am a native of Marietta, Georgia, and have been a resident and taxpayer of Marietta and Cobb County for the past 13 years. I am not a party to the so-called Rapid Transit suit involving Yost et al as plaintiffs and Gunby et al as defendants. However, as a property owner and a taxpayer, I am concerned with its outcome.

The suit raises serious questions as to the constitutionality of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 as well as to the validity of certain referenda in which some of the various political subdivisions in the Atlanta area were called upon to decide whether or not they wished to participate in the scheme. I know this to be true because I have read the suit.

Judge Moore of the Fulton Superior Court decided the case in favor of the defendants, and I attended the hearing.

The plaintiffs appealed the decision to the Georgia Supreme Court and hearing on the arguments was scheduled for November 9, 1965. Because of my interest in the suit, I was in the Courtroom in the section reserved for spectators, when the case was called.

The following is a description of what took place in the Courtroom – in my view as a layman and from what I was able to see and hear.

Mr. G. Seals Aiken, appellants' attorney, placed his

papers on the lectern before the Bench and started to speak. He was immediately interrupted by Mr. Justice Quillian's asking questions about when a certain document had been filed with the Court. I believe the document referred to is designated as the Enumeration of Errors.

Mr. Aiken said something to the effect that he had requested and received from Mr. Chief Justice Duckworth an extension of time in which to file some other document (which I understood to be appellants' brief).

Mr. Justice Duckworth entered into the discussion and said something to the effect that the time for filing the document known as the Enumeration of Errors was fixed by statute, and that settled it; he had no alternative but to dismiss the case forthwith, he said.

Mr. Aiken then asked for a period of time in which to file a brief on that point. Mr. Justice Duckworth specified five days and, on Justice Quillian's suggestion, increased it to ten days.

Mr. Justice Duckworth excused himself from the Bench for a few minutes, and during this interval, several of the other Justices joined Mr. Justice Quillian in questioning Mr. Aiken regarding the filing of the Enumeration of Errors.

Mr. Aiken attempted several times to begin his arguments on the merits of the issue; and each time one or another of the Justices would pose a question or make a statement about the filing of the Enumeration of Errors.

The Clerk of the Court was asked about appellants' remaining time. From the reply it appeared that there were only seven minutes left.

Mr. Aiken again attempted to argue the case on its merits. He said there was a question of a billion dollars of the taxpayers' money at stake. Mr. Justice Quillian interjected a statement to the effect that the Court was not concerned with the amount of money involved. The Court, he said, was concerned only with questions of law.

Mr. W. Stell Huie, counsel for the Rapid Transit Interim Study Commission, stated that while he could not speak for the other parties appellee, his client was not moving for dismissal of the case. He stated that serious constitutional questions had been raised and he felt the issues should be resolved.

Mr. Justice Duckworth suggested to Mr. Huie that he stop arguing against his case, and sit down.

Mr. Aiken then attempted to introduce Mr. Ben Garner, one of the appellants in the action.

As Mr. Garner started to rise from his seat, Mr. Justice Duckworth asked, "Who is this man; is he a member of the Bar?"

Mr. Aiken explained that Mr. Garner was not a lawyer, but was one of the appellants in the matter before the Court, and, as such (by virtue of a provision in the Georgia Constitution) was legally qualified to argue his own case.

Mr. Justice Duckworth said that inasmuch as Mr. Garner was represented by counsel he would not permit him to speak.

Mr. Aiken then attempted to cite the provision in the Georgia Constitution which says that a person may be represented by counsel, or may prosecute or defend his own case, or both.

Mr. Justice Duckworth said, "He is not going to speak in this Court."

Mr. Aiken said something about the possibility of his client's appeal to the United States Supreme Court.

Mr. Justice Duckworth said if Mr. Aiken was going to take the case "there", he would enter an order of dismissal from the Bench.

This affidavit is made and submitted to appellants' attorney for use in a motion for reconsideration by the Supreme Court of Georgia of its judgment of dismissal of the case of Yost et al vs. Gunby et al.

Sgd. GEORGE H. KEELER

GEORGE H. KEELER

Sworn to and subscribed before me,
this 17th day of November, 1965.

Sgd. MARGARET G. BRYAN

Notary Public, Cobb County, Georgia.

My Commission Expires Aug. 18, 1967.

APPELLANTS' EXHIBIT C

DECISIONS OF SUPREME COURT OF GEORGIA IN OTHER CASES AND CERTIFICATE AND LETTER OF CLERK OF SAID COURT RELEVANT TO THE CASE AT BAR.

Decided: Oct. 19, 1965

SUPREME COURT OF GEORGIA No. 510

23160. STANFORD v. EVANS, REED & WILLIAMS

QUILLIAN, Justice. In the instant case the appellant filed his notice of appeal on August 14, 1965, 31 days after the trial judge's order overruling his motion for new trial, which order was rendered on July 14, 1965. The Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 21; *Code Ann.* § 6-803) provides: "A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of . . . , but when a motion for new trial, or a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the order granting, overruling, or otherwise finally disposing of the motion." While there is a proviso that the trial judge may extend the time for filing the notice of appeal (Ga. L. 1965, pp. 18, 21; *Code Ann.* § 6-804), the entire record was sent to this court and no order extending the time is contained therein. The failure to file a notice of appeal within the time required is a ground for dismissal under Ga. L. 1965, pp. 18, 29, as amended, Ga. L. 1965, pp. 240, 241 (*Code Ann.* § 6-809).

Appeal dismissed. All the Justices concur, except Mobley, J., not participating for providential cause.

SUBMITTED OCTOBER 11, 1965 — DECIDED OCTOBER 19,

1965 — JUDGMENT ADHERED TO ON REHEARING NOVEMBER 4, 1965.

Appellate procedure. Screven Superior Court. Before Judge Usher.

LIMERICK L. ODOM, for appellant.

W. COLBERT HAWKINS, for appellee.

ON REHEARING.

For the reasons therein stated we adhere to our original judgment. However, for another insurmountable reason this case must be dismissed. Upon further examination of the record, we find that the enumeration of errors was filed 17 days after the case was docketed in this court. Under the view we take of Sections 13 and 14 of the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 29, as amended Ga. L. 1965, pp. 240, 243; *Code Ann.* § § 6-809 and 6-810) they require the enumeration of errors to be filed within the time prescribed by this court for the appellant to file his brief. Rule 20 of the Rules of the Supreme Court of the State of Georgia specifies that the appellants' brief must be filed with the clerk within 15 days after the docketing of the case in this court. Hence, the enumeration of errors in this case was not timely and, for this further reason, the appeal is dismissed.

Rehearing denied. All the Justices concur, except Mobley, J., not participating for providential cause.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

(SEAL) s/s HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT D

Appendix 44

Decided Oct. 19, 1965

SUPREME COURT OF GEORGIA

23151. MALLARD v. MALLARD.

CANDLER, Presiding Justice. On April 20, 1962, a decree was entered in the Superior Court of Newton County which required Leo Sessions Mallard to pay his wife, Polly Davis Mallard, from whom he was by the same decree divorced, the sum of $45 per week for the support and maintenance of their minor child. Pursuant to the provisions of an Act approved March 9, 1955 (Ga. L. 1955, p. 630, *Code Ann.* § 30-220) which authorizes the revision upward or downward of a decree for child support, Mallard filed a suit in the same court against his former wife in which he prayed for a downward revision of the decree, basing his prayer for such relief on the ground that there had been a substantial change in his income and financial status since the rendition of such decree. A general demurrer to his petition was overruled and there is no exception to that judgment. His divorced wife also answered his petition and denied that there had been a substantial change in his income and financial condition since the child support decree was granted. The plaintiff was the only witness who testified on the trial, and while he was testifying, the trial judge, on his own motion, halted further examination of the witness and stated that he would direct a verdict in favor of the defendant since he did not think the evidence given by the witness would authorize a modification of the decree. Counsel for the plaintiff thereupon stated to the court that there was other evidence which he wished to introduce respecting a change in plaintiff's financial condition. To this the court replied: "I'll let you put in anything you

think is necessary for the record if you want to carry it up, what you proposed to prove, so that you'll have that perfected, but I don't think there's been enough evidence here to warrant a modification or even letting it go to the jury, but if you want to put anything in the record, I'll be glad to do it, and if I am wrong, then I can be corrected." Counsel for the plaintiff then asked the court, "Is this stopping me from entering any further evidence as to this man's financial condition? Is that the order of the court?" The court indicated that such was its ruling. Counsel for the plaintiff then stated to the court that he did not care to introduce further evidence unless it was admitted for the jury's consideration. After this occurrence, the plaintiff as a witness in his own behalf gave no further testimony, no other evidence was introduced by either party, and a verdict for the defendant was directed. The plaintiff moved for a new trial and alleged that the court erred in refusing to permit him to introduce all of his evidence respecting a change in his financial status and in directing a verdict for the defendant. The motion for new trial was overruled and the plaintiff excepted to that judgment. *Held*: "Where there is no conflict in the evidence, and that introduced, with all reasonable deductions or inferences therefrom, shall demand a particular verdict, the court may direct the jury to find for the party entitled thereto. In the event that the defendant shall fail to put in any evidence in the trial of any case, he shall nevertheless be entitled to move for a directed verdict when the parties have closed their respective cases." *Code Ann.* § 110-104. But it is an elementary principle of law that a trial judge is never authorized to direct a verdict against a party litigant until he has introduced or had an opportunity to

introduce all of his evidence on the issues involved and rested his case. See, in this connection, *Walker v. Supple,* 54 Ga. 178 (2); *McWilliams v. City of Rome,* 138 Ga. 581 (75 SE 645). In the instant case the record clearly shows that the plaintiff was not permitted to offer all of his evidence respecting an alleged change in his financial status for the jury's consideration; and since this is true, the ends of justice require this court to order a new trial. *Judgment reversed. All the Justices concur, except Mobley, J., not participating for providential cause.*

SUBMITTED OCTOBER 11, 1965 — DECIDED OCTOBER 19, 1965.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in Case No. 23151, Leo Sessions Mallard v. Polly Davis Mallard, as appears from the original of file in this office.

I do further certify that the said case was docketed in this court on August 20, 1965, and that both the brief for the appellant and his enumeration of errors were filed in this court on September 15, 1965, as appears from the records and files of this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

(SEAL) s/s HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT E

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that Georgia Supreme Court Case No. 23182, J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al., was docketed in the said court on September 16, 1965, that on September 28, 1965, Chief Justice Duckworth granted to counsel for appellants an extension of time until October 10, 1965, within which to file his brief for the appellants and that the said brief and the enumeration of errors were both filed in this court on October 5, 1966 — all as appears from entries on page 37 of Volume 24 of the General Docket of this court.

Witness my signature and the seal of the said court hereto affixed the day and year first above written.

(SEAL) HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT F

Appendix 48

STATE OF GEORGIA
SUPREME COURT
ATLANTA

January 12, 1966

Mr. G. Seals Aiken
1409 Candler Building
Atlanta, Georgia 30303

Dear Mr. Aiken:

Re: Case No. 23182, Yost et al. v.
Gunby, Ordinary, et al.

In your letter of January 11, 1966, you ask whether I know of any case which this court dismissed prior to the dismissal of the above stated case, on the ground that the appellant failed to file his enumeration of errors within 15 days from the docketing of the case in this court but in which the appellant did file his enumeration of errors within the time extended by the Court within which to file his brief.

I know of no such prior case. So far as I know your case (No. 23182) was the first case in which this point arose under the new Procedure Act.

Sincerely yours,

s/s HENRY H. COBB

HHC/fc

HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT G

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IN THE

Supreme Court of the United States

October Term, 1965

No. 1021

J. VERNON YOST, ET AL.

Petitioners

VS.

HON. EUGENE GUNBY,
Ordinary of Fulton County, ET AL.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Georgia is reported at 221 Ga. 552, 145 SE 2d 575 (1965), decided November 9, 1965, rehearing denied November 29, 1965.

JURISDICTION

Jurisdiction is invoked by the petitioners under the provisions of 28 U.S.C.A. 1257 (3). Jurisdiction is disputed by the respondents on the grounds that there is

no substantial federal question. Cf. Rule 19 (1) (2), United States Supreme Court.

QUESTIONS PRESENTED

1. Should a decision of a State Supreme Court, concerned wholly with State procedural law, and involving no substantial federal questions, be reviewed by the United States Supreme Court on petition for writ of certiorari?

2. Was the decision of the Supreme Court of Georgia in the instant case based solely on State procedural questions?

(a) Did the decision of the Georgia Supreme Court, holding that the appeal should be dismissed because the enumeration of errors was not filed in time, involve anything other than a State procedural question?

(b) Should the decision of the Georgia Supreme Court be reviewed when, even if it were incorrect, the record in the case clearly showed that the appeal was filed too late to be considered by the Georgia Appellate courts?

3. Should the United States Supreme Court review the decisions of the Supreme Court of Georgia, when the record shows that all of the original relief sought had to do with the invalidity of certain elections or actions thereunder, and the necessity for such elections has been obviated by subsequent action of the General Assembly of Georgia?

STATUTES INVOLVED

The petition for certiorari involves provisions of the Georgia Appellate Procedure Act of 1965, Ga. Code

Anno., Chap. 6-7 through 6-12, and 6-17 (Ga. L. 1965, p. 18, 240), and the Rules of the Supreme Court of Georgia, Ga. Code Anno., Chap. 24-45, 220 Ga. 912 (1965). Also involved are the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2246 (Appendix, p. 33) as amended by Act 403, 1966 Session of the General Assembly of Georgia, Ga. L. 1966, p. ...., Appendix, p. 30). Pertinent portions of these statutory authorities are quoted in the argument section of this brief.

STATEMENT OF CASE [1]

This originally was a suit brought in the Superior

[1] Counsel for Respondents are advised by the Clerk of the Supreme Court of Georgia, that only one copy of the transcript of the record to be filed with this Court was prepared, and since it has already been filed with this Court, it is impossible to duplicate the pagination contained therein. Accordingly, citations to the Record ("R. ....") appearing in this brief are to the page numbers of the record in the Supreme Court of Georgia. Counsel have been informed that this pagination also appears in the record certified for use in this Court in addition to the new pagination. In commenting on the record filed with this Court, counsel for respondents would be somewhat remiss in their duty as members of the bar of the Supreme Court of Georgia if they did not make some comment upon the affidavits contained in the appendix to the petition in this case. A. 20-40. These affidavits are so biased, argumentative and one-sided as to be unworthy of any extended discussion. The Supreme Court of Georgia was well aware of what took place before it at the hearing on November 9, 1965, and apparently considered any action in reference with such scurrilous documents to be beneath its dignity. In accordance with this view, these documents were physically removed from the files of the Supreme Court of Georgia and returned to counsel for the petitioners. Since the affidavits present issues which, if they were not contained in the judicial proceeding, would likely be grounds for an action for libel under Georgia law, it is suggested that this court treat them in the same manner as the Supreme Court of Georgia. If information is desired as to the proceedings which took place on November 9, 1965, this should be requested from the justices of the Supreme Court of Georgia, or opportunity should be given to present testimony subject to cross-examination.

Court of Fulton County, Georgia, by thirteen named plaintiffs against thirteen named defendants, and all of the members of the Board of Aldermen of the City of Atlanta, an additional sixteen individuals. All of the defendants were public officials of Fulton, DeKalb and Gwinnett County, Georgia, the City of Atlanta, Georgia, or of the State of Georgia. The petition as amended attempted to contest the validity of referendum elections held in certain governmental units of the Atlanta Metropolitan area on June 16, 1965, and sought to urge the invalidity of certain statutes and provisions of the Constitution of Georgia under both the Georgia and the United States Constitutions. Subsequent to the initial filing of the suit, the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority was permitted to intervene as a party defendant. (R. 44).[2]

On July 28, 1965, the Honorable Virlyn D. Moore, Judge of the Superior Court of Fulton County, sustained general demurrers to the petition as amended and dismissed the same, holding, in effect, that no valid election contest was alleged and that no valid State or Federal Constitutional attack was made on any statute or constitutional provision of the State of Georgia (R. 113).

On August 30, 1965, the plaintiffs, petitioners in this Court, filed an appeal to the Supreme Court of Georgia. The appeal was docketed with the Clerk of the Supreme

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[2] Under the terms of Ga. Laws, 1965, p. 2243, 2247, the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority ceased to exist on January 3, 1966. The Interim Study Committee was replaced by the Metropolitan Atlanta Rapid Transit Authority. It should be noted that the Metropolitan Rapid Transit Authority is not now and never has been a party to the instant action, although its counsel has joined in this brief in opposition as a party of interest not a party to the record because of concern with the outcome of this litigation.

Court of Georgia on September 17, 1965. Although there is no formal order appearing in the record of the case, it is conceded that the Hon. William H. Duckworth, Chief Justice of the Supreme Court of Georgia, extended the time for the filing of *briefs* for all parties to the appeal for a period of ten (10) days. No contention is made that there was any extension of time requested for or granted for the filing of an enumeration of errors. The brief and the enumeration of errors of the petitioners was filed with the Supreme Court on October 5, 1965.

The case came on duly for argument before the full bench of the Supreme Court of Georgia (Justice Mobley being absent for providential cause) on November 9, 1965. At that time the appeal was dismissed on the grounds that the enumeration of errors was not filed with the Georgia Supreme Court within the time provided by law. 221 Ga. 552, 145 S.E. 2d 575 (1965). This decision was adhered to, on motion for rehearing on November 29, 1965. *Ibid.* The published decision of the Supreme Court of Georgia shows that no ruling was made as to the correctness or incorrectness of the trial court in holding that no cause of action was stated for an election contest or any constitutional attack in the original petition. It is from the judgment of the Supreme Court of Georgia dismissing the appeal, adhered to on rehearing, that the petitioners have filed their petition for writ of certiorari to this Court.

SUMMARY OF ARGUMENT

It is the contention of the respondents that the petition for a writ of certiorari should be denied for three reasons. Initially, it should be pointed out the express basis of the decision of the Supreme Court of Georgia in the

instant case was that the state court appeal should be dismissed because the enumeration of errors was not filed within the time provided by law. This is purely a question of Georgia procedural law and presents no substantial federal question for review by this Court.

Secondly, it is the contention of the respondents that the decision of the Supreme Court of Georgia was correct, and even if it were not, review by this Court would accomplish nothing since Georgia law would have required dismissal of the state appeal on grounds involving no federal questions.

Lastly, it is felt that this case is inappropriate for grant of the writ of certiorari, as the issues in the main case have been rendered moot. Even if all of the petitioners' difficulties as to Georgia procedure are ignored, it can be seen that the only prayers for relief concern the validity of certain elections, and action thereunder. Subsequent to the filing of the petition for certiorari, the necessity of such elections was obviated by action of the General Assembly of Georgia, and, hence, any attacks on the validity of such elections or actions taken thereunder are pointless.

ARGUMENT

I. The Petition for Writ of Certiorari, Seeking to Attack a Judgment of a State Supreme Court, Based Solely on An Interpretation of State Procedural Law, Presents No Substantial Federal Question for Review by This Court.

The initial contention of the respondents, that there is no substantial federal question, can perhaps be best set forth through a careful analysis and examination of the "Questions Presented for Review" contained in

pages 5 through 9 of the petition. It is clear that one of the questions presented involves no federal issue whatsoever. Question 2 is whether "the Supreme Court of Georgia deprived petitioners of their liberty and property without due process of law and equal protection of law" in certain specified particulars. There is no allegation that action taken by the Supreme Court of Georgia in any way infringes upon any federal right. It should be noted that the Georgia Constitution contains an express due process clause. (Ga. Code Anno. 2-102, Ga. Const., Art. I, Sect. I, Para. II). "It is well settled that such an averment [alleging a taking of property without due process] making no reference to the Constitution of the United States and asserting no express rights thereunder, is solely referable to the State Constitution which, in this instance, has a due process clause and *affords no basis whatsoever for invoking the jurisdiction of this Court.*"

> *McDonald* v. *Oregon R. & Nav. Co.*, 233 U.S. 665; 345 S. Ct. 772, 58 L. Ed. 1145 (1914) (Emphasis supplied).

It is equally clear that the other questions presented for review, even though attempting to allege a violation of the petitioners' rights under the 14th Amendment of the Constitution of the United States, actually present no substantial Federal questions for review by this Court. An examination of the opinion of the Supreme Court of Georgia, *Yost, et al.* v. *Gunby, et al.*, 221 Ga. 552, 145 S.E. 2d 575 (1965) clearly shows that the only point which was decided by that Court was that the enumeration of errors filed more than fifteen days after the appeal

was docketed was not timely, and, hence, the appeal must be dismissed.[3]

This is solely a question of the Georgia Supreme Court interpreting Georgia procedural law, to-wit: the Georgia Appellate Procedure Act of 1965 (Ga. Code Anno. Chap. 6-7 through 6-12; Ga. L. 1965, p. 18 et seq., P. 240 et seq.) Although the petitioners allege this interpretation to be erroneous under Georgia law, this actually presents no Federal question. As has been said by the United States Supreme Court:

> " 'Without any doubt it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law. *Callan* v. *Bransford,* 139 U.S. 197; *Brown* v. *Massachusetts,* 144 U.S. 573; *Jacobi* v. *Alabama,* 187 U.S. 133; *Hulbert* v. *Chicago,* 202 U.S. 275, 281; *Newman* v. *Gates,* 204 U.S. 89; *Chesapeake & Ohio Railway Co.* v. *McDonald,* 214 U.S. 191, 195.' *John* v. *Paullin,* 231 U.S. 583, 585, 58 L. Ed. 381, 382, 34 S. Ct. 178. ' (W) hen as here there can be no pretence that the (state) Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong.' *Nickel* v. *Cole,* 256 U.S. 222, 225, 65 L. Ed. 900, 905, 41 S. Ct. 467."
>
> Cited with approval *Wolfe* v. *North Carolina,* 346 U.S. 177, 195, 80 S. Ct. 1482, 4 L. Ed. 2d 1650, 1662 (1960).

[3] See Part II *infra.* p. 10 for a discussion of the points of law involved in the decision of the Supreme Court of Georgia.

The petitioners, in their petition for writ of certiorari, attempt to present to this Court for review the correctness of the trial court's ruling on demurrers in this case. It has been consistently held by this Court that this type of issue, although present in the State case, when not passed upon by the State Supreme Court because of procedural or substantive defects in presenting the issue, will not be reviewed by the United States Supreme Court. Cf. *Wolfe* v. *N. C.*, 346 U.S. 177, 80 S. Ct. 1482, 40 L. Ed. 2d 1650 (1960), *Herndon* v. *Ga.*, 295 U.S. 441, 35 S. Ct. 794, 79 L. Ed. 1531 (1935).

As was succinctly stated by Mr. Justice Harlan in his dissenting opinion, in *Evans* v. *Newton*, 383 U.S. ___, 86 S. Ct. ___, 15 L. Ed. 2d 373, 386 (1966):

> "This plainly contravenes the established rule that this Court will not reach constitutional questions if their decision can reasonably be avoided. *Peters* v. *Hobby*, 349 U.S. 331, 99 L. Ed. 1129, 75 S. Ct. 790; *United States* v. *Rumely*, 345 U.S. 41, 97 L. Ed. 770, 73 S. Ct. 543; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 553, 9 L. Ed. 773, 826. Application of that doctrine is especially called for here where decision should require precise knowledge of the factual details and nuances that only time and a complete record can bring into focus. Dismissal of the writ should thus follow."

The decision of the Supreme Court of Georgia on a purely Georgia procedural matter is definitive. Even though there are assertions made by the petitioners in this case that such a decision is a wrong interpretation of Georgia law, it is impossible for a State Supreme Court to make a wrong interpretation of State law. The United States Supreme Court is "bound by the decision of that Court [Supreme Court of a State] as though the

meaning as fixed by the court had been expressed in the statute itself in specific words." *Guaranty Trust Co.* v. *Blodgett,* 287 U.S. 511, 513, 53 S. Ct. 244, 77 L. Ed. 453, 465 (1932). Just as this Court is the supreme authority for determining the meaning of all Federal laws, so the Georgia Supreme Court is the supreme authority for determining the meaning of all Georgia law, provided that Federal constitutional issues are not involved.

> "This decision upon a matter of practice under State procedure, did not draw in question any right complainant had under the Constitution or laws of the United States. It afforded no basis for the contention that her right to be heard in her own behalf was denied." *Thorington* v. *City Council of Montgomery,* 147 U.S. 490, 494, 13 S. Ct. 394, 37 L. Ed. 252, 253 (1893).

For these reasons it is respectfully submitted that the decision of the Supreme Court of Georgia presents no substantial Federal question for review by this Court and the petition for writ of certiorari should be denied.

II. There Were Adequate Grounds to Substantiate the State Court Decision Under the Laws of Georgia Involving No Federal Question, and This Court Should Refuse to Grant the Writ of Certiorari.

As has been pointed out in Part I of this section of respondents' brief in opposition, the actual decision of the Supreme Court of Georgia was based solely on the proposition that since the Enumeration of Errors was not filed within the time provided by law, the appeal must be dismissed. This is a decision on Georgia procedural law, involving no Federal constitutional rights.

The reasons for this decision of the Supreme Court of Georgia may appear somewhat obscure to one who is not

familiar with the history of appellate procedure in Georgia, but becomes apparent when examined in light of statutory enactments and prior judicial decisions. Prior to August 1, 1965, review of lower court decisions was made by the appellate courts of Georgia by common law writ of error as it had been for some one hundred and twenty years, since the establishment of the Supreme Court of Georgia. However, at the 1965 Session of the General Assembly of Georgia, there was enacted the Georgia Appellate Procedure Act of 1965, Ga. Code Anno. Chap. 6-7 through 6-12 (Ga. Laws, 1965, p. 18, 240). Although this Act was apparently an attempt to combine the best features of the Georgia system of writ of error with the system of appeals used underneath the Federal Rules, in retrospect it appears that the effect of it may have been to combine the worst features of the two systems. Under the new Act, an appeal is taken by the filing of a Notice of Appeal. (Ga. Code Anno. 6-802, Ga. L. 1965, p. 21). However, apparently as a vestige of the old Bill of Exceptions, the Act in Section 14 also provides that there shall be filed with the Clerk of the appellate court an "Enumeration of the Errors Relied Upon." Ga. Code Anno. 6-810, (Ga. L. 1965, p. 244). This Section, as originally enacted, provided that the Enumeration of Errors should be filed "as a part of the brief" in the appellate courts. When opposition to this requirement was expressed by the Chief Justice of the Supreme Court, the Section was amended prior to the time it became effective, so as to provide that the Enumeration of Errors be filed in the appellate court and simultaneously in the trial court "at the time the brief is filed." (See Leverett, "The Appellate Procedure Act of 1965," 1 Ga. St. B. J. 478, 479). Under the Rule 20 of the Supreme Court of Georgia, the brief of the appel-

lant must be filed within fifteen (15) days after the docketing of the case in the Supreme Court. Ga. Code Anno. 24-4520, 220 Ga. 912 (1965). The holding of the Supreme Court in both the instant case and in previous cases decided under the new Appellate Procedure Act, such as *Stanford* v. *Evans, Reed & Williams,* 221 Ga. 331, 145 S.E. 2d 504 (1965), *Close* v. *Walker Land Corp.,* 221 Ga. 329, 145 S.E. 2d 245 (1965), and *Davenport, et al.* v. *Hall, Mayor, et al.,* 221 Ga. 543, 146 S.E. 2d 569 (1965) was to the effect that the Enumeration of Errors must be filed within this 15-day period, even though an extension of time is actually given for the filing of the brief.

The basis for the Motion for Re-Hearing by the petitioners in this case, and also the primary basis of the petition for writ of certiorari, seems to be that since the Enumeration of Errors was filed at the time the brief was, the requirements of the law were satisfied. This argument would be logically appealing except that it fails to recognize the essential difference between a brief and an Enumeration of Errors under Georgia law, and the rules of the Georgia Supreme Court. A brief is a document required by the rules of the Supreme Court to assist the Court, with citations of authority and argument to decide the issues before it. Under the present rules of the Georgia Court, failure to file briefs does not affect the appeal at all, but will be dealt with as a contempt of court (Ga. Code Anno. 24-4546, Rule 46, Ga. S. Ct., 220 Ga. 919 (1965). But cf. Rule 15 (b) of the Court of Appeals of Georgia, Ga. Code Anno. 24-3615, 111 Ga. App. 889 (1965) amended 18 Ga. L. Rept. No. 46, where failure to file a brief is an "abandonment of the appeal"). There is no requirement in the statute law

of Georgia that a brief be filed in the Supreme Court at all. Indeed, the Supreme Court could, by rule, eliminate completely the requirement of filing briefs. The brief in the Supreme Court is not a part of the record in the case, and is kept separately from the record by the Clerk of the Court.

On the other hand, the Enumeration of Errors is not for the purpose of assisting the Court to decide the issues before it, but rather, is the document which determines the issues before the Court. The Enumeration of Errors is a document required by statute law to be filed with the Court (Section 14, Appellate Procedure Act, Ga. Code Anno. 6-810, Ga. L. 1965, p. 244). When it is filed it becomes part of the record in the case and failure to file it is ground for dismissal of the appeal. Sec. 13 (b) (4) Appellate Procedure Act, Ga. Code Anno. 6-809 (b) (4), Ga. L. 1965, p. 243. The reason for the importance attached to the Enumeration of Errors under the Appellate Procedure Act is obvious, because "since Assignments of Error are abolished, the filing of the Enumeration of Errors in the appellate court is essential, for it is in the Enumeration of Errors relied upon . . . that the court knows what is before it." Leverett, "The Appellate Procedure Act of 1965," 1 Ga. St. B.J. 45, 458 (1965).

When this distinction between a brief and an Enumeration of Errors is considered, it is apparent that the decision of the Supreme Court of Georgia in the instant case was correct. Since a brief is a document to assist the court only, the court can determine when it can be filed. If it is filed 20 or 30 days after the docketing of a case, or even after oral argument before the court, this late filing does not affect the merits of the appeal. If such late filing has been authorized by one of the Justices of the court, as was done in the instant case, this, of

course, would tend to negate or eliminate any contempt of court.

On the other hand, the Enumeration of Errors must be filed at a fixed time in order that both the court and the appellees may be appraised of the contentions made by the appellant. This fixed time is prescribed by Section 14 of the Appellate Procedure Act, Ga. Code Anno. 6-800, Ga. L. 1965, p. 243, as being "at the time the brief is filed." Under Rule 20 of the Supreme Court of Georgia, the brief "must be filed with the Clerk within fifteen (15) days after the docketing of the case in this court." Ga. Code Anno. 24-4520, 220 Ga. 912. (1965). Hence, it is apparent that failure to file the Enumeration of Errors within the 15 days after docketing is cause for dismissal of the appeal under Section 13 of The Appellate Procedure Act, Ga. Code Anno. 6-800, Ga. L. 1965, p. 29, 243.

Although Section 6 of The Appellate Procedure Act, Ga. Code Anno. 6-804, Ga. L. 1965, p. 2, might be construed as authority for the Supreme Court, or any Justice thereof, to extend the 15 day filing period for the Enumeration of Errors, Rule 7 of the Georgia Supreme Court, Ga. Code Anno. 24-4507, 220 Ga. 910 (1965), provides: "This Court will issue no order granting extensions of time as provided in the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 21, § 6)." It would appear that the only way this rule could be altered would be through action of the entire court, and not the unilateral action of any justice. Of course, in the instant case, it is doubtful there was even any attempt at such unilateral action, as the petitioners make no contention that there was any express extension of time for the filing of Enumeration of Errors by the Chief Justice.

The foregoing summary of the Georgia Appellate Procedure may appear somewhat involved, but is intended to make it clear that the petitioners in this case were victims of "progress" and "reform" and their own inattention to the requirements of Georgia Statute Law and the Rules of the Supreme Court of Georgia. These are results which, though unfortunate, present no Federal Constitutional issue.

In addition to the statutory construction relied upon by the Georgia Supreme Court in its decision, it should also be observed that there was another Georgia procedural point which, although not expressly passed upon by the Georgia Supreme Court, clearly required a dismissal of the State appeal. This point was that the Notice of Appeal was not filed from the trial court to the Supreme Court of Georgia within the time provided by law. This is clear from an examination of the relevant provisions of the Georgia Appellate Procedure Act. Ga. Code Anno. Chap. 6-7 through 6-12, Ga. L. 1965, pp. 18 et seq., pp. 240 et seq.

Section 5 of the Appellate Procedure Act, Ga. Code Anno. 6-803, Ga. L. 1965, p. 211, provides:

> "A Notice of Appeal shall be filed within thirty (30) days after entry of the appealable decision or judgment complained of . . ."

while Section 18 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-903, Ga. L. 1965, p. 32, defines the "entry" of a judgment as being the "filing with the Clerk of a judgment signed by the Judge."

To determine whether the Notice of Appeal was filed within the time provided by law in the instant case, it is necessary to briefly review the order of the trial judge

in this case and the sequence of events which occurred in the trial court.

On July 28, 1965, the trial court entered the following order:

> "After argument and consideration, the general demurrers of each of the defendants to the petition, as amended, are hereby sustained with twenty (20) days' leave to amend. If not amended within said time, the suit is dismissed." (R. 113).

This order was filed with the Clerk of Fulton Superior Court on the same day, July 28, 1965, and thus constituted the "entry of such judgment" within the meaning of Section 18 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-903, Ga. L. 1965, p. 32. The petitioners in the instant case filed no amendment to their petition within the twenty (20) day period permitted by the trial court's order. The appellants filed no Notice of Appeal within thirty (30) days of the entry of the order of July 28, 1965, but, rather, beyond this thirty (30) days period, on August 30, 1965, filed a Notice of Appeal to the Georgia Supreme Court. This Notice of Appeal, of course, would be within thirty (30) days from August 17, 1965, the date of the automatic dismissal under the order of July 28, 1965.

However, under these circumstances in this case, it is submitted that Section 5 of the 1965 Appellate Procedure Act, Ga. Code Anno. 6-803, Ga. L. 1965, p. 21, requiring a "Notice of Appeal" to "be filed within thirty (30) days after entry of the appealable decision or judgment complained of," by its express terms, would make the appeal in this case too late and subject to dismissal by the Georgia Supreme Court, under the provisions of Section 13 (b) (1) of the Appellate Procedure Act, Ga. Code Anno. 6-809 (b) (1), Ga. L. 1965, p. 29, 243.

It appears that this result is contrary to the result which would have been reached prior to the effective date of the Appellate Procedure Act, because, in similar situations, both the Supreme Court and the Court of Appeals of Georgia had held that the time for filing a Bill of Exceptions was thirty (30) days from the date of the automatic dismissal of the petition under the order of the trial court. See *Peyton* v. *Rylee,* 191 Ga. 40, 11 S.E. 2d 195 (1940); *Luke* v. *Green,* 201 Ga. 482, 40 S.E. 2d 85 (1946); cf. *Northside Manor, Inc.* v. *Vann,* 219 Ga. 298, 133 S.E. 2d 32 (1963). See also, *Rochester Capital Leasing Corp.* v. *Christian,* 109 Ga. App. 818, 137 S.E. 2d 518 (1964), and *Echols* v. *Time Motor Sales Inc.,* 111 Ga. App. 554, 142 S.E. 2d 324 (1965).

However, it should be noted that all of these decisions, of both the Supreme Court and the Court of Appeals, were decided when Section 6-902 of the Georgia Code Annotated provided "Bills of Exception shall be tendered to any judge authorized by law to certify them, within thirty (30) days from the date of the decision complained of." Code, Sec. 6-902, was, of course, repealed by Sec. 21 (b) of the Appellate Procedure Act, Ga. Code Anno. 6-902, Ga. L. 1965, p. 37.

It would thus appear that although the Notice of Appeal in this case was within thirty (30) days from "the date of the decision complained of," i.e., automatic dismissal of the petition, it still was not filed within thirty (30) days from the "entry" of the appealable decision.

Although this would appear to be somewhat of an anomalous result to be reached under an Act "reforming" Appellate Procedure in Georgia, it is a result that

cannot be avoided under the plain language used by the General Assembly of Georgia.

From the foregoing, it is apparent that the decision of the Supreme Court of Georgia rested on adequate State grounds, and since no Federal questions were involved, the petition for a writ of certiorari should be denied. This is particularly true since an examination of pertinent Georgia law shows that there were equally valid grounds requiring the dismissal of the appeal in the State Court, which would, in all likelihood, be the basis of the decision in the event of a reversal.

III. The Petition for Writ of Certiorari Should Be Denied Because the Issues Presented by the Original Appeal to the Georgia Supreme Court Are Now Moot.

It is further the contentions of the respondent in this case that all of the issues presented by the original suit in the Georgia Court have been rendered moot by subsequent action of the General Assembly of Georgia, and that none of the relief prayed for in the original petition can be granted. To illustrate this point it is necessary to examine the prayer for relief as contained in the rewritten petition of plaintiffs as amended (R. 73). It should be noted that these are the only prayers for relief remaining in the case, since the prayers of the original petition were stricken, and none of the subsequent amendments of the petitioners contained any prayers for relief.

First, it should be noted that prayers (a) and (f) are purely formalistic, asking for issuance of process and a prayer for general relief. (R. 73)

The first prayer having any substance is prayer (b)

(R. 73), which is to the effect that the petitioners ask "that a rule nisi issue to the defendants herein requiring them to show cause on a day certain before this court why a permanent order should not issue restraining and enjoining them from any declaration of the results of the special election held on June 16, 1965, and particularly, that they be permanently restrained and enjoined from any action or the assumption of any office of any kind or nature or the expenditure of public funds for the purposes implicit in the referendum referred to herein."

It is clear that under this prayer for relief the petitioners are seeking injunctive relief having to do with action of the respondents taken pursuant to the referendum election referred to in the petition. An examination of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2248, Appendix p. 33), show that the referenda referred to were conducted pursuant to Section 6 (b) of the Act. However, it should be noted that the cited provision of the Metropolitan Atlanta Rapid Transit Authority Act has been repealed by action of the General Assembly of Georgia. See Act No. 403 (Senate Bill 171, 1966 Session of the General Assembly, approved by the Governor of Georgia on March 4, 1966). (See Appendix to Response, p. 30).

Since there is no further need for the referendum and the provisions of law authorizing it have been repealed, any issues pertaining to the referendum election are now moot.

It should be noted that all of the other prayers of the petition are concerned with the effect and the validity of the referendum election. Prayer (c) is that: "This Court issue a declaratory judgment and decree to the

effect that the election held on June 16, 1965, is illegal ab initio, void and of no force and effect." (R. 73)

Prayer (d) is: "That a temporary restraining and enjoining order issue, prohibiting the taking of any office or action, or the expenditure of any public money under the referendum referred to in the allegations herein, until further order of court," (R. 73)

Prayer (e) is: "That this Court permanently enjoin and restrain the defendants and/or any of them from enforcing said constitutional amendment, Metropolitan Atlanta Rapid Transit Authority Act thereunder, and the said election pursuant thereto, as being contrary to law, contrary to the Constitution of Georgia, and the Constitution of the United States, in all the particulars alleged in this petition." (R. 73)

A careful examination of Act No. 403, 1966 Session (Appendix, p. 30), shows that the General Assembly has eliminated completely the necessity for the referendum elections, which were attacked in the original suit. The General Assembly of Georgia has confirmed participation in the Metropolitan Atlanta Rapid Transit Authority "by the counties of Fulton, DeKalb, Clayton, Gwinnett and the City of Atlanta," and the nonparticipation in the Authority by Cobb County. Hence, the issue presented by the original petition has been removed from the Georgia courts, and from this Court, by reason of action of the Georgia General Assembly.

It also should be noted that the Metropolitan Atlanta Rapid Transit Authority created by Section 4 of the Act (Ga. L. 1965, p. 2246, Appendix, p. 33) is not a party to the instant action, and has never been. The Interim Study Commission of the Metropolitan Atlanta

Rapid Transit Authority intervened in the trial court. However, it ceased to exist by operation of law on January 3, 1966, prior to the filing of the petition for writ of certiorari in this case.

It also should be noted that the only duties imposed upon three of the defendants in this case, to-wit: the Ordinaries of Fulton, DeKalb and Gwinnett Counties, the Hon. Eugene Gunby, the Hon. Katherine Mann, and the Hon. Alton W. Tucker, were to conduct the referenda elections referred to. Since the necessity for these referenda has been eliminated by legislative action, these respondents have no further interest in the litigation.

The duties imposed upon the other respondents, to-wit: the Commissioners of Fulton County, the Commissioners of DeKalb County, and the Mayor and Members of the Board of Aldermen of the City of Atlanta, are the appointment of members to the Metropolitan Rapid Transit Authority. These appointments have already been made, as shown by certifications from each of the governing authorities involved, attached as an appendix to this response (Appendix, pp. 24-29).

Hence, it is clear that no relief can be granted in this action as to any of the respondents herein. For these reasons, all of the issues presented by the original petition are now moot, and, accordingly, the petition for writ of certiorari should be denied.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for writ of certiorari should be denied.

JOHN TYE FERGUSON
927 Fulton Federal Building
Atlanta, Georgia 30303
Attorney for Respondents

Of Counsel:

HAROLD SHEATS
504 Court House
Atlanta, Georgia 30303
Attorney for Respondents Gunby,
Aldredge, McCart and Lindsey

ARTHUR K. BOLTON, Attorney General
PAUL L. HANES, Asst. Attorney General
132 Judicial Building
10 Capitol Square
Atlanta, Ga. 30334
Attorneys for Respondent Fortson

GEORGE P. DILLARD,
HERBERT O. EDWARDS,
ROBERT E. MOZLEY
588 Church Street
Decatur, Georgia
Attorneys for Respondents Mann,
Manning, Callaway, Haynes, Almand and Evans

HENRY L. BOWDEN
JOHN E. DAUGHERTY
C & S National Bank Building
Atlanta, Georgia 30303
Attorneys for Respondents Allen and
the Members of the Board of Aldermen of
the City of Atlanta

For Parties of Interest Not Parties to the Record:

W. STELL HUIE
JACK P. ETHERIDGE
882 Fulton Federal Building
Atlanta, Georgia 30303
Attorneys for Metropolitan Atlanta Rapid Transit Authority

HOMER M. STARK
HOPE D. STARK
Lawrenceville, Georgia
Attorneys for Respondent Tucker

PROOF OF SERVICE

I, JOHN TYE FERGUSON, Attorney for the Respondents in the foregoing petition for Writ of Certiorari, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17 day of March, 1966, I served a copy of the foregoing Brief In Opposition upon the petitioners herein as follows:

By mailing a copy thereof in a duly addressed envelope, with first class postage prepaid to their Attorney of Record as follows:

G. Seals Aiken
Suite 1409-10 Candler Building
Atlanta, Georgia 30303

John Tye Ferguson

JOHN TYE FERGUSON
Attorney for Respondents

927 Fulton Federal Building
Atlanta, Georgia 30303

APPENDIX

Minutes of Board of Aldermen of City of Atlanta, July 6, 1965, appointing members to the Board of of Directors of the Metropolitan Atlanta Rapid Transity Authority.

OFFICE OF THE MAYOR

July 1, 1965

Ivan Allen, Jr.

Mr. J. J. Little
Clerk of the Board of Aldermen
City of Atlanta, Georgia

Dear Mr. Little:

In accordance with Section 6 of Senate Bill 102 enacted by the Georgia Legislature at its 1965 Session and pertaining to the Metropolitan Atlanta Rapid Transit Authority, I am hereby nominating the following as members of the Board of Directors of The Metropolitan Atlanta Rapid Transit Authority:

Mr. Richard H. Rich—for a term of four years commencing January 1, 1966.

Mr. Mills Lane—for a term of three years commencing January 1, 1966.

Mr. L. D. Milton—for a term of two years commencing January 1, 1966.

Mr. Rawson Haverty—for a term of one year commencing January 1, 1966.

It is requested that these nominations be submitted to the Board of Aldermen for election at its meeting on July 6th.

Very truly yours
/s/ Ivan Allen Jr.

MAYOR ALLEN then recognized Alderman Knight who seconded the nominations of the above for nominees to the Board of Directors of the Metropolitan Rapid Transit Authority. These four members were then elected for the above stated terms of office by the following roll call vote of the Board of Aldermen: YEA: Aldermen Dennis, Griggs, Gilliam, Flanigen, Knight, Vickers, Wood, Leftwich, White, Freeman, Turner, Farris, Summers, Cook, Fowlkes. (15). NAY: none (0).

STATE OF GEORGIA }
}CITY OF ATLANTA
COUNTY OF FULTON }

I, J. P. Green, do hereby certify that I am the duly appointed Deputy Clerk of the Board of Aldermen, City of Atlanta, Georgia and as such am in charge of keeping the minutes and records for said Body; that the attached sheet is a true and correct copy of a portion of page 278 of Minute Book No. 10 of the Minutes of the Board of Aldermen meeting held on July 6, 1965 in the City of Atlanta, Georgia. Lines 17 through 28 is a copy of the Mayor's letter nominating Richard H. Rich, Mills Lane, L. D. Milton and Rawson Haverty to the Board of Directors of THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY. Lines 29 through 31 explains the second of this nomination and the subsequent election of the Board of Directors.

The attached and foregoing is the same as shown on the original record, of record and on file in my said office.

GIVEN under my hand and seal of office on this the 10th day of November, 1965.

J. P. GREEN
Deputy Clerk of the Board of Aldermen

Minutes of the Board of Commissioners of DeKalb County, July 6, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

The Commission discussed the appointments of the Interim Study Rapid Transit Committee members from DeKalb County and agreed at this time that these appointments be made permanent members of the Board of Authority for Rapid Transit.

A motion was then made by Commissioner Haynes, seconded by Commissioner Evans and unanimously passed to approve the appointment of Doctor Sanford Atwood and Mr. Roy A. Blount, who were appointed by the Commission on May 17, 1965 as members of the Interim Study Committee of Rapid Transit, as permanent members of the Board of Metropolitan Atlanta Rapid Transit Authority.

I, the undersigned, Glenn C. Blaisdell, Clerk of the Board of Commissioners of Roads and Revenues, DeKalb County, Georgia, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by said Board in meeting lawfully attended on 6th day of July, 1965. And same appears in Minutes of said Board this 10th day of November, 1965.

GLENN C. BLAISDELL
Clerk, Board of Commissioners
of Roads & Revenues,
DeKalb County, Ga.

Minutes of the Board of Commissioners of Roads and Revenues of Fulton County, Georgia, December 15, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

A RESOLUTION

A RESOLUTION APPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY.

WHEREAS, the 1965 Session of the General Assembly of Georgia did pass an Act approved March 10, 1965, and known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," (Ga. Laws 1965, p. 2243); and

WHEREAS, under the provisions of Section 6 of said Act, the Board of Directors of the Authority is composed of ten (10) members, two (2) of whom shall be residents of Fulton County, to be appointed by the local governing body thereof;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF ROADS AND REVENUES OF FULTON COUNTY, AS FOLLOWS:

1. M. C. BISHOP is hereby appointed a member of the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority, for a term of office commencing January 1, 1966, and expiring December 31, 1968.

2. WILLIAM A. PULVER is hereby appointed a member of the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority, for a term of office commencing January 1, 1966, and expiring December 31, 1966.

3. The Clerk of this Commission is hereby authorized and directed to furnish a copy of this Resolution to M. C. Bishop, William A. Pulver, and the Interim Study Committee of the Metropolitan Atlanta Rapid Transit Authority.

I, Frank R. Fling, do hereby certify that the above and foregoing resolution was unanimously adopted by the Board of Commissioners of Roads and Revenues in a special meeting held December 15, 1965, same being recorded in Minute Book Q-3.

This the 28th day of December, 1965.

FRANK R. FLING, Clerk.

Minutes of Commissioners of Roads and Revenues of Gwinnett County, June 25, 1965, appointing members to the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority.

A RESOLUTION

Office of the Board of County Commissioners

GWINNETT COUNTY, GEORGIA

WHEREAS, the General Assembly of Georgia did, at its 1965 Session, adopt legislation known as Senate Bill No. 102, cited as the Metropolitan Atlanta Rapid Transit Authority Act of 1965; and

WHEREAS, upon proper Resolution and legal advertisement Special Referendum was held in Gwinnett County on June 16th, 1965, and majority of those voting in said Referendum voted in favor of participating in the Authority.

NOW, THEREFORE, BE IT RESOLVED that the

Commissioners of Roads and Revenues of Gwinnett County shall appoint Kenneth A. McMillon to the Board of the Metropolitan Atlanta Rapid Transit Authority to represent Gwinnett County. During the remainder of the year 1965 Mr. McMillon will serve on the Interim Study Commission of the Metropolitan Atlanta Rapid Transit Authority and on January 3, 1966 he will begin serving on the Metropolitan Atlanta Rapid Transit Authority and will continue to serve for a period of two (2) years.

This the 25th day of June, 1965.

COMMISSIONERS OF ROADS AND REVENUES

W. RAY MORGAN, *Chairman*

W. R. PRUITT, *Vice-Chairman*

O. F. THOMPSON,
Clerk and Member

ATTEST:
O. F. THOMPSON, *Clerk*

I, O. F. THOMPSON, do hereby certify that the attached and foregoing resolution of June 25, 1965 was unanimously adopted by the Board of Commissioners of Roads and Revenues in a Special Meeting held on June 25, 1965, same being recorded in Minute Book "I", Page 129.

This the 1st day of July, 1965.

O. F. THOMPSON, Clerk.

Act 403 (S.B. 171), 1966 Session of the General Assembly of Georgia, Approved March 4, 1966.

AN ACT

To amend the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2243) by repealing certain provisions therein with respect to the Interim Study Commission and the holding of referenda as a prerequisite for further participation in the Authority by the local governing bodies of the local governments within the metropolitan area; by making provision for the further participation in the Authority by any local governing body which may have declined membership and participation in the Authority; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Section 2 (b) and Section 5 of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (Ga. Laws 1965, p. 2243), relating to the Interim Study Commission, are hereby repealed. In repealing these provisions, it is the intent of the General Assembly to recognize that the Interim Study Commission has served the transitional purpose for which it was created, and that it has now been succeeded by the Board of Directors as contemplated by Section 5 (d) and 6 (c).

Section 2. Section 6 (b) and 6 (c) of the Metropolitan Atlanta Rapid Transit Authority Act of 1965, relating to referenda as a prerequisite for further participation in the Authority by the local governing bodies of the local governments within the metropolitan area, are hereby repealed. In repealing these provisions, it is the

intent of the General Assembly to recognize that the referenda held pursuant thereto served the purpose originally contemplated and to confirm participation in the Authority by the Counties of Fulton, DeKalb, Clayton and Gwinnett and the City of Atlanta, the nonparticipation in the Authority by Cobb County, and the procedures by which this participation and nonparticipation have been effected.

Section 3. A new Section 6 (b) is hereby enacted to read as follows:

"Section 6 (b). Any local government may initially decline membership on the Board and further participation in the Authority. Where any local government has initially declined membership on the Board and further participation in the Authority, it may at any time thereafter reclaim its membership on the Board and participate further in the Authority by a request from the local governing body thereof to the Board for that purpose. Before making such a request, such local governing body shall submit to the qualified voters thereof in a referendum, to be prescribed by local Act, the question of whether it should participate further in the Authority or not. If it appears that a majority of those voting in such referendum vote in favor of further participation in the Authority, and if it appears that no financial advantage over other participating local governments has accrued or will accrue to it by having previously declined participation, the Board shall approve such request. Thereupon such local government shall be a participant in the Authority and its rights and responsibilities

shall, insofar as possible, be the same as if it had participated in the Authority from its beginning."

In enacting this provision it is the intent of the General Assembly to recognize that Cobb County has declined membership on the Board of Directors and further participation in the Authority, and its purpose is to provide a procedure whereby Cobb County may, on a basis that is fair to all participating local governments and to Cobb County, assume the participation originally contemplated.

Section 4. All laws and parts of laws in conflict with this Act are hereby repealed.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

ACT NO. 78 (S.B. NO. 102)

1965
SESSION
OF THE
GENERAL ASSEMBLY

An Act to create the Metropolitan Atlanta Rapid Transit Authority; to provide for a short title; to provide for definitions; to provide for legislative findings and declaration of policy; to provide for creation and organization; to provide for an interim study commission; to provide for a board of directors; to provide for purposes; to provide for general powers; to provide for fares, rates, rentals and charges; to provide for revenue bonds; to provide for equipment trust certificates; to provide for the power of eminent domain; to provide for removal and relocation of utility structures, etc.; to provide for competitive bidding on contracts, etc.; to provide for conflict of interests; to provide for financial accounts, audits and reports; to provide for budgets and budgeting procedures; to provide for an engineering survey; to provide for insurance on leased property; to provide for rules and regulations; to provide for bargaining; to provide for the printing and distribution of reports and documents; to provide for tax and regulatory exemptions; to provide for tort liability and insurance; to provide that the Authority shall have no power to impose any tax; to provide for local government participation; to provide for other matters relative to the foregoing and relative to the general purpose of this Act; to provide for severability; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Short Title. This Act shall be known, and may be cited, as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965."

Section 2. Definitions. The following words and terms shall have the meaning indicated unless the context shall clearly indicate a different meaning:

(a) Authority. The Metropolitan Atlanta Rapid Transit Authority created by section 4.

(b) Interim Study Commission. The temporary governing body of the Authority as provided in section 5.

(c) Board. The Board of Directors and governing body of the Authority as provided in section 6.

(d) Metropolitan Area. The territory comprising the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, including the City of Atlanta, but excluding the territory of any local government which may decline membership on the Board as hereinafter provided.

(e) Local Government. Any one of the counties of Fulton, DeKalb, Cobb, Clayton, or Gwinnett, or the City of Atlanta, which is a part of the metropolitan area, as a political subdivision of this State.

(f) Local Governing Body. The board of county commissioners, the mayor and board of aldermen, or similar official governing body of the local governments within the metropolitan area.

(g) Transportation System. All property, real or personal, useful for the public transportation of passengers for hire, including but not limited to power plants, substations, terminals, garages, bridges, tunnels, subways, elevated rails, aerial structures, monorails, rail motive power, trains, railroad passenger cars and equipment, belt conveyors, inclines, carbarns, street cars, buses, rails, lines, poles, wires, stations, concessions, off-street parking and other facilities for the comfort, safety and convenience of transit passengers, rights and licenses therefor, and rights to provide group and party services.

(h) Transportation Project. Any unit, structure, facility or undertaking in any combination which may be a component part of a transportation system.

(i) Rapid Transit System and Project. A transportation system the primary function of which is to provide a mass transportation service principally by the use of high speed vehicles traveling on rights-of-way fully protected from other vehicular and pedestrian traffic, a secondary function of which is to provide a feeder-type mass transportation service therefor, and an incidental function of which is to

provide facilities necessary thereto and other facilities for the comfort, safety and convenience of its passengers. A rapid transit project is any transportation project which may contribute to the development or operation of a rapid transit system.

(j) Cost of a Rapid Transit System or Project. According to accepted principles of accounting, the total cost, paid or incurred, to study, plan, design, finance, acquire, construct or otherwise develop the component parts of a rapid transit system or project to a normal operating or revenue producing conditions, including the capitalization of expenses, direct and indirect, paid or incurred, in connection therewith.

(k) Federal Government. The United States of America, or any department, agency or instrumentality thereof.

Section 3. Legislative Findings and Declaration of Policy. The territory comprising the counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett, including the City of Atlanta, has developed, and continues to develop, phenomenally into a metropolitan area with a common interest in the cultural, social and economic well-being of the people therein and the development of the educational, commercial and industrial resources thereof. There exists in this metropolitan area serious traffic conditions and congestions and serious mass transportation problems which impede, and will increasingly impede, the development of these common interests toward their fullest potential. Concerted governmental action is needed to alleviate such traffic conditions and congestion, supply deficiencies in mass transportation, coordinate and balance the transportation facilities operating therein, and otherwise provide a sounder basis for the development of traffic patterns and control. The development of a rapid transit system through a joint instrumentality of the local governments within the metropolitan area is a reasonable approach to the aforesaid needs and problems. The cultural, social and economic well-being of the people in the metropolitan area and the development of the educational, commercial, and industrial resources thereof are matters of public interest and concern through-

out the State. Accordingly, it is the public policy of this State, as a matter of public health, safety, convenience and welfare, to promote the establishment of such a joint instrumentality, encourage participation therein by the local governments involved, facilitate the accomplishment of its purposes and bring about solutions for the aforesaid needs and problems.

Section 4. Creation and Organization. There is hereby created a public body corporate to be known as the Metropolitan Atlanta Rapid Transit Authority as a joint public instrumentality of the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett for the purposes hereinafter provided.

Section 5. Interim Study Commission.

(a) There is hereby created the Interim Study Commission of the Metropolitan Atlanta Rapid Transit Authority which shall be the governing body of the Authority until the activation of the Board of Directors of the Authority as hereinafter provided. The Interim Study Commission shall be composed of eleven members. Four members shall be residents of the City of Atlanta to be nominated by the Mayor and elected by the Board of Aldermen; two members shall be residents of DeKalb County to be appointed by the local governing body thereof; two members shall be residents of Fulton County to be appointed by the local governing body thereof; one member shall be a resident of Cobb County to be appointed by the local governing body thereof; one member shall be a resident of Clayton County to be appointed by the local governing body thereof; and one member shall be a resident of Gwinnett County to be appointed by the local governing body thereof. Each member shall serve from the time of his appointment until the expiration of the Interim Study Commission as hereinafter provided.

(b) For the purposes set forth in section 7, the Interim Study Commission may exercise the powers of the Authority prescribed in section 8 (e), 8 (f) and 8 (k), the power to perform any duty imposed on the Board, the power to

appoint, select and employ officers, agents, and employees, including engineering, architectural and construction experts, fiscal agents and attorneys, which may be necessary for the exercise of the aforesaid powers, and allow them suitable compensation, and the power to contract for, purchase or otherwise acquire the services, supplies and equipment which may be necessary for the exercise of the aforesaid powers. The intent is that for the purposes of the Authority, the Interim Study Commission shall function as its governing body in the same way that the Board might function under this Act were it duly activated except that the Interim Study Commission shall be limited in the exercise of the powers of the Authority to those set forth above. As to the exercise of such powers, and as to the organization of the Interim Study Commission, the qualification of its members and their duties, as a body and as individual members, all the provisions of this Act relating to the Board and its members shall apply thereto to the extent necessary to place the Interim Study Commission in the same position as the Board except that the Interim Study Commission shall be limited in the exercise of the powers of the Authority to those set forth above.

(c) The local governing body of each local government in the metropolitan area is authorized to make such appropriation of public funds to the Authority to defray the expenses incurred by the Interim Study Commission as it may deem appropriate. The authority herein granted shall be subject to and limited by any local act heretofore or hereafter enacted more particularly applicable to the local governing body of any local government.

(d) When the Board of Directors of the Authority is duly activated as hereinafter provided, the Interim Study Commission shall by operation of law cease to exist and simultaneously therewith the Board of Directors shall become the governing body of the Authority with the capacity to exercise all powers granted to the Authority under this Act and there shall be no lapse in the continuity of the government of the Authority or its affairs.

Section 6. Board of Directors.

(a) The Board of Directors of the Authority shall be composed of eleven members. Four members shall be residents of the City of Atlanta to be nominated by the Mayor and elected by the Board of Aldermen; two members shall be residents of DeKalb County to be appointed by the local governing body thereof; two members shall be residents of Fulton County to be appointed by the local governing body thereof; one member shall be a resident of Cobb County to be appointed by the local governing body thereof; one member shall be a resident of Clayton County to be appointed by the local governing body thereof; and one member shall be a resident of Gwinnett County to be appointed by the local governing body thereof. Initially, one member appointed by the local governing body of the City of Atlanta and one member appointed by the local governing body of Fulton County shall be appointed for terms of one year; one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of DeKalb County, and one member appointed by the local governing body of Gwinnett County shall be appointed for terms of two years; one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of Fulton County, and one member appointed by the local governing body of Clayton County shall be appointed for terms of three years; and one member appointed by the local governing body of the City of Atlanta, one member appointed by the local governing body of DeKalb County, and one member appointed by the local governing body of Cobb County shall be appointed for terms of four years; all initial terms shall be deemed to have commenced as of January 1, 1966. After the initial terms have expired, appointments shall be for terms of four years except that a vacancy caused otherwise than by expiration shall be filled for the unexpired portion thereof by the local governing body which made the original appointment to the vacant position, or its successor in office. A member of the Board may be appointed to succeed himself.

(b) Prior to making any appointment to the membership of the Board, each local governing body shall submit to the qualified voters thereof in a referendum the question

whether it should participate further in the Authority or not. Such referendum shall be held during the calendar year 1965, in accordance with the procedures prescribed in section 24 (g) insofar as applicable. If a majority of those voting in such referendum vote in favor of further participation in the Authority, the local governing body thereof shall forthwith appoint its members to the Board of the Authority. If a majority of those voting in such referendum vote against further participation in the Authority, the local governing body shall not participate further in the Authority and will be deemed to have declined membership on the Board. In this event the definition of the metropolitan area in section 2 (d) shall be adjusted, the total membership of the Board as prescribed in section 6 (a) shall be reduced accordingly, no provision of this Act shall thereafter be applicable to such local governing body, its local government or the territory thereof, and this Act shall thereafter be read as if every reference to the name thereof had been deleted.

(c) Appointments to the Board shall be made by the local governing bodies in the metropolitan area prior to January 1, 1966. On January 3, 1966, persons duly appointed as members of the Board shall meet at the State Capitol in a joint meeting with the Interim Study Commission. The Interim Study Commission shall first meet and verify the appointive credentials of each person who presents himself as a member of the Board. The Chairman of the Interim Study Commission shall then act as temporary Chairman of the Board, call to order the first meeting of the Board, declare the Board as duly constituted and activated and preside over the election by the Board of its first Chairman. Thereupon the Interim Study Commission shall stand dissolved and the transfer of the government of the Authority shall simultaneously pass to the Board as contemplated in Section 5 (d).

(d) No person shall be appointed as a member of the Board who holds any other public office or public employment except an office in the reserves of the armed forces of the United States or the National Guard; any member who accepts or enters upon any other public office or public

employment shall be disqualified thereby to serve as a member.

(e) A local governing body may remove any member of the Board appointed by it for cause. No member shall be thus removed unless he has been given a copy of the charges against him and an opportunity to be publicly heard in his own defense in person or by counsel with at least ten days' written notice. A member removed from office shall have the right to a judicial review of his removal by an appeal to the superior court of the county of the local governing body which appointed him, but only on the ground of error of law or abuse of discretion. In case of abandonment of his office, conviction of a crime involving moral turpitude or a plea of nolo contendere thereto, removal from office, or disqualification under subsection (d) hereof, the office of a member shall be vacant upon the declaration of the Board. A member shall be deemed to have abandoned his office upon failure to attend any regular or special meeting of the Board for a period of four months without excuse approved by a resolution of the Board, or upon removal of his residence from the territory of the local governing body which appointed him.

(f) Each member of the Board shall be paid by the Authority the sum of fifty dollars for each official meeting of the Board he attends, but he shall not be paid more than five hundred dollars for meetings attended in any one calendar month. A member of the Board shall also be reimbursed for actual expenses incurred by him in the performance of his duties as authorized by the Board. A Board member shall not be allowed employee benefits authorized under Section 8 (b).

(g) The Board shall elect one of its members as chairman and another as vice-chairman for terms to expire on December 31 of each year to preside at meetings and perform such other duties as the Board may prescribe. The presiding officer of the Board may continue to vote as any other member, notwithstanding his duties as presiding officer, if he so desires.

(h) The Board shall hold at least one meeting each month. The Secretary of the Board shall give written notice to each member of the Board at least two days prior to any called meeting that may be scheduled, and said Secretary shall be informed of the call of such meeting sufficiently in advance so as to provide for his giving notice as above. One more than a majority of the total membership of the Board, as it may exist at the time, shall constitute a quorum. A majority of the quorum present at a meeting may exercise all the powers and perform all the duties of the Board, except as otherwise hereinafter provided or as limited by its by-laws, and no vacancy on the original membership of the Board, or thereafter, shall impair the power of the Board to act. All meetings of the Board, its Executive Committee, or any committee appointed by the Board, at which any official business is transacted, shall be open to the public, and the minutes thereof, and the documents and reports made a part of such minutes or referred to therein, shall be public records and open to public inspection in accordance with reasonable rules and regulations prescribed by the Board. The Board shall furnish certified copies of such public records upon written request and upon payment of a reasonable charge therefor.

(i) Notwithstanding any other provisions of this Act, the following actions by the Board shall require the affirmative vote of one more than a majority of the total membership of the Board as it may exist at the time:

(1) The issuance and sale of revenue bonds as contemplated in section 10 or equipment trust certificates as contemplated in section 11.

(2) The purchase or lease of any privately owned system of transportation of passengers for hire in its entirety, or any substantial part thereof, as contemplated in section 8 (c) or 8 (d). Any such purchase or lease shall be made only upon a showing that the acquisition of said public or private system of transportation is essential to the development of a means of rapid transit for the metropolitan areas.

(3) The award of any contract for construction, alterations, supplies, equipment, repairs, maintenance or services

other than professional services, or for the purchase, sale or lease of any property involving $5,000 or more.

(4) The grant of any concession as contemplated in section 14 (f).

(5) The award of any contract for the management of any Authority-owned property or facility as contemplated in section 14 (h).

(j) The Board shall appoint and employ, as needed, a general manager, a secretary, a treasurer, and a general counsel, none of whom may be members of the Board or a relative of a member of the Board, and delegate to them such authority as it may deem appropriate. It may make such by-laws or rules and regulations as it may deem appropriate for its own government, not inconsistent with this Act, including the establishment of an Executive Committee to exercise such authority as its by-laws may prescribe.

(k) The treasurer of the Authority and such other officers and employees of the Authority and such members of the Board as the Board may determine shall execute corporate surety bonds, conditioned upon the faithful performance of their respective duties. A blanket form of surety bond may be used for this purpose. Neither the obligation of the principal or the surety shall extend to any loss sustained by the insolvency, failure or closing of any depository which has been approved as a depository for public funds.

Section 7. Purposes.

The Authority shall exist for purposes of planning, designing, leasing (as lessee), purchasing, acquiring, holding, owning, constructing, improving, equipping, financing, maintaining and administering a rapid transit system within the metropolitan area, and operating same, or contracting therefor, or leasing (as lessor) same for operation by private parties.

Section 8. General powers.

The Authority shall have all powers necessary or convenient to accomplish the aforesaid purposes including, by

way of illustration and not specification, the following:

(a) The powers, privileges and immunities authorized by law for private corporations and for instrumentalities of government. The Authority may sue or be sued in its corporate name but no execution shall be levied on any property of the Authority prior to ninety (90) days from the date of a final judgment against the Authority. The Board may adopt and use a common seal for the Authority and change it at its pleasure.

(b) The power to appoint, select and employ officers, agents and employees, including engineering, architectural and construction experts, fiscal agents and attorneys, allow them suitable compensation and make provisions for group insurance, retirement or other employee benefit arrangements.

(c) The power to acquire, lease (as lessee), purchase, hold, own and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease (as lessor), transfer, or dispose thereof whenever same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for its purposes.

(d) The power to acquire by gift, purchase, lease (as lessee), or otherwise, or to construct, improve, maintain, repair, operate or administer any component parts of a rapid transit system, together as a system, or singly, or in groupings, as rapid transit projects, or to contract for the maintenance, operation or administration thereof or to lease (as lessor) same for maintenance, operation or administration by private parties.

(e) The power to develop data, plans and information and develop and carry out mass transportation demonstration projects, including the development, testing and demonstration of new facilities, equipment, techniques and methods, and the improvement and utilization of transportation services and facilities, and any other means of developing, utilizing or improving mass transportation in

urban areas. Also, in other respects, the power to conduct engineering, financial and economic studies, to make plans, designs and tests related to rapid transit projects. In connection therewith the Authority may enter in a reasonable manner upon any lands, waters or premises for the purpose of making reasonable surveys, soundings, drillings and examinations and such entries shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries. In the event the Authority refuses to pay such damages within sixty days after written demand has been made by the person entitled to such damages and a finding has been made that such refusal was in bad faith, the Authority shall be liable to pay, in addition to the actual and consequential damages, all reasonble attorneys fees for the prosecution of the case against the Authority. The amount of such reasonable attorneys fees shall be determined by the trial jury and shall be included in any judgment which has been rendered in such action; provided, however, such attorneys fees shall be fixed on the basis of competent, expert evidence as to the reasonable value of such services, based on the time spent and legal and factual issues involved, in accordance with prevailing fees in the locality where such suit is pending, and provided further that the trial court shall have the discretion, if its finds such jury verdict fixing attorneys fees to be greatly excessive or inadequate, to review and amend such portion of the verdict fixing attorneys fees without the necessity of disapproving the entire verdict. The limitations contained in this section in reference to the amount of attorneys fees are not controlling as to fees which may be agreed upon by the plaintiff and his attorney for the services for such attorney in the action against the Authority.

(f) The power to cooperate, participate and coordinate with the Federal Government, or the State of Georgia, or any agency or instrumentality thereof, or any municipal or county governing body within the metropolitan area or any agency, instrumentality thereof, or the Atlanta Regional Metropolitan Planning Commission (1960 Ga. L. p. 3102, as amended), or any similar joint agency, in the execution of any studies, plans or projects designed for the coordi-

nation of its rapid transit system with other transportation in the metropolitan area and with any comprehensive planning and development of the metropolitan area.

(g) The power to acquire property, both real and personal, or rights of easement therein, or franchises necessary or convenient for the purposes of the Authority, by gifts, purchase, lease (as lessee) or contract.

(h) The power to make and execute all contracts and other instruments necessary or convenient to the exercise of the powers of the Authority, including the power to contract for managerial and operating services.

(i) The power to enter into contracts with the State of Georgia, its agencies and instrumentalities, and, particularly with the local governments within the metropolitan area, for public transportation services to be rendered by the Authority or its rapid transit system, and for any other purposes incidental to the establishment and maintenance of its rapid transit system, or any part or project thereof, and the usual facilities related thereto.

(j) The power to contract with any public utility, railroad or transportation company for the joint use of property or rights, or for the establishment of through routes, joint fares or transfer of passengers.

(k) The power to apply for and accept grants or other assistance from the Federal Government or from any source whatever, to act as agent for the Federal Government, and to enter into contracts, loans, leases or other transactions with the Federal Government.

(l) The power to borrow money from private lenders, or from the Federal Government, or to the extent otherwise authorized by law, from the State of Georgia or any local government within the metropolitan area, in such amounts as may be necessary for the purposes of the Authority and, in connection therewith to issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the Authority, and to secure the payment

thereof, or any part thereof, by pledge of its revenues, rentals, and receipts, and to make such agreements with the purchasers or holders thereof, or with others in connection therewith, whether issued or to be issued as the Board may deem advisable. But the Authority shall have no power in any manner to pledge the property, credit or taxing power of any local government, nor shall any of its obligations be deemed to be obligations of any local government, nor shall any local government be liable for the payment of principal or interest on such obligations.

(m) The power to fix, alter, charge and collect fares, rates, rentals and other charges for its facilities by zones or otherwise at reasonable rates to be determined exclusively by the Board, subject to judicial review as hereinafter provided.

(n) The power to make agreements with the Federal Government, the State of Georgia, any agency, instrumentality or political subdivision thereof, for payments to the Authority in lieu of fares for the transportation of personnel or other persons for whom such department, agency, instrumentality or political subdivisions desires such transportation.

(o) The power to contract for, or to provide and maintain, with respect to the facilities and property owned, leased, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health and safety. For these purposes a member of such force shall be a peace officer and, as such, he shall have authority equivalent to the authority of a policeman of the city or county in which he is discharing his duties.

(p) The Authority shall have no power to operate taxicabs, or facilities designed exclusively for the transportation of property for hire, nor shall it engage in other activities commonly regarded as private enterprise, except to

develop a rapid transit system, provide concessions, off-street parking and other facilities for the comfort, safety and convenience of transit passengers, and otherwise accomplish the purposes and policies expressed and contemplated in this Act.

Section 9. Fares, Rates, Rentals and Charges.

(a) The Board shall fix such fares, rates, rentals and charges in such amounts as shall be sufficient in the aggregate (when added to any other grants or funds available to the Authority) to provide funds for the payment of the interest on and principal of all bonds, certificates and other obligations payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the Authority in connection with the issuance of bonds or certificates under this Act, and for the payment of all operating costs and expenses which shall be incurred by the Authority, including provisions for appropriate reserves.

(b) The term "charges" shall include revenues from contracts with the local governments within the metropolitan area under which the Authority has agreed to render for them the public transportation service as contemplated in Section 24 hereof.

(c) The Board shall determine by itself exclusively after public hearings as hereinafter provided, the routes, types of construction, equipment, facilities, and the scope and standards of service to be operated by the Authority, the scheduled services to be made available to the public and the amounts to be charged therefor. Before making any determinations as to scheduled services or amounts to be charged therefor, the Board shall first hold at least one public hearing after giving notice of the time and place by twice advertising on different days in the newspaper having the largest circulation in the metropolitan area not more than ten days nor less than five days prior to the hearing. As to all other matters, the Board may hold such public hearings as it may deem appropriate, and as to all public hearings, it may prescribe reasonable rules and regulations to govern such hearings not inconsistent with this

Act. Any person aggrieved by any determination of the Board as to any charge or scheduled service, or any change in any charge or scheduled service, except charges payable under contracts between local governments and the Authority as contemplated in Section 24, may challenge same by a petition in equity filed within 30 days of the determination complained of in any superior court of any county of the metropolitan area in which the charge or scheduled service may be applicable; provided, however, that the grounds of such challenge shall be restricted to abuse of discretion on the part of the Board or lack of authority under the law; otherwise, all determinations by the Board shall be final. Whenever two or more legal actions are brought against the same determination of the Board in different superior courts, exclusive jurisdiction thereof shall be vested in the first such court to docket such a petition and all other petitions may be refiled in the superior court having such exclusive jurisdiction.

(d) Prior to determining the basic routes over which the Authority shall operate its system and stations connected therewith, the Board shall consult with the local governing body of the territory involved, and, additionally, shall hold at least one public hearing within the territory of each local government within the metropolitan area at which the local governing body, or its representative, and the public may be heard.

(e) The function of the Board under subsection (c) and (d) shall not be delegated or exercised by any other person or body under any circumstances.

Section 10. Revenue Bonds.

(a) In borrowing money, as authorized in section 8 (1), the Board may, in a single issue, or in various issues from time to time, issue negotiable revenue bonds of the Authority for the purpose of paying all or a part of the cost of a rapid transit project or projects.

(b) Such bonds may be issued without any other proceeding, or the happening of any other conditions or events, than those proceeding, conditions, or events which are re-

quired by this Act. In the discretion of the Board, bonds of a single issue may be issued for the purpose of a particular rapid transit project. Any resolution authorizing the issuance of bonds under the provisions of this Act may be made effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular or special meeting of the Board. However, the by-laws of the Board shall provide for advance written notice to members of the Board of any proposed resolution for the issuance of any bonds hereunder and for waivers thereof before action thereon.

(c) The principal of and interest on such bonds shall be payable solely from the special debt retirement fund hereinafter established for this purpose in subsection (m) hereof.

(d) The bonds of each issue shall be dated, shall bear interest payable semi-annually at a rate not exceeding six percent per annum, and shall mature in such amounts and at such times as the Board may deem appropriate but not exceeding forty years from the date thereof. The bonds may be in coupon or registered form, or both, as the Board may determine, and the Board may make provision for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(e) The Board may prescribe the form of the bonds and any coupons which may be used in conjunction therewith; it may determine the denominations of the bonds, the terms and conditions of their redemption before maturity, the medium of payment both as to principal and interest and the place of payment of principal and interest, which may be at any bank or trust company within or without the State.

(f) All such bonds shall bear the manual or facsimile signature of the chairman or vice-chairman of the Board, attested by the secretary or treasurer thereof, and bear the official seal of the Authority. Any coupons attached thereto shall bear the facsimile signature of the secretary or treasurer of the Board. When bonds or coupons bear the manual or facsimile signature of an officer of the Authori-

ty, such signature shall remain valid and effective for its original intent and purpose notwithstanding that prior to delivery the signer thereof may have ceased to hold the office indicated.

(g) All bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this State. Such bonds are hereby declared to be issued for an essential public and governmental purpose, and said bonds and the interest thereon shall be exempt from all taxation within the State.

(h) All bonds of the Authority shall be sold by public competitive bidding at par plus accrued interest to the date of delivery; provided, however, the Authority may obligate itself to deliver any given issue of bonds to the purchasers thereof within any reasonable period of time after the date of sale and may pay as a penalty for delay in such delivery such reasonable sums as may be agreed upon in advance in writing with the purchaser or purchasers of such bonds. All bonds of the Authority shall be advertised and offered prior to the fixing of the interest rates thereon, and bids thereon shall be competitive as to the interest rate offered by each bidder; provided, on any issue the Authority may make rules limiting the number of divisions into which the bonds of various maturity dates may be divided, and the number and percentage spreads of the different interest rates which may be bid to apply such divisions of the bonds and provided further, the Authority may require reasonable security for the performance of the contract of purchase of any successful bidder at any public competitive bidding held. The advertising of bond issues of the Authority and invitations to bid shall be as customarily done in the handling of governmental bond issues and section 14(b) as to these matters shall not necessarily apply. The Authority may negotiate the sale of its bonds to the Federal Government.

(i) The proceeds of such bonds shall be used solely for the payment of the cost of a rapid transit project or rapid transit projects. If the proceeds of a bond issue are not

sufficient to cover the cost thereof, unless otherwise provided in the resolution authorizing the issuance of the bonds, or in any trust indenture pertaining thereto, additional bonds may in like manner be issued to provide the amount of the deficiency. Unless otherwise provided in the resolution authorizing the issuance of the bonds, or in any trust indenture pertaining thereto, such additional bonds shall be deemed to be of the same issue and to be paid from the same fund, without preference or priority, as the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were originally issued, the surplus shall be paid into such fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust indenture pertaining thereto or at the specific direction of the Board may be used for any other rapid transit project or projects.

(j) Prior to the preparation of definitive bonds the Board may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter.

(k) In the discretion of the Board any issue of such revenue bonds may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust indenture may pledge or assign fares, fees, rentals, charges, revenues and earnings of the Authority, including the proceeds derived from the sale of any surplus property of the Authority. Either the resolution authorizing the issuance of the bonds or any trust indenture pertaining thereto may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants concerning the duties of the Authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair and insurance of the property, and the custody, safeguarding and application of all monies, including the proceeds derived from the sale of property of the Authority, both real and personal, and may also provide that any project shall be constructed and paid

for under the supervision and approval of consulting engineers or architects employed or designated by the Board and satisfactory to the original purchasers of the bonds issued therefor, and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other monies be satisfactory to such purchasers, and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the Board. Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the Board may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of the project affected by such indenture.

(l) The Board shall, in the resolution authorizing the issuance of bonds or in any trust indenture pertaining thereto, provide for the payment of the proceeds of the sale of the bonds to any bank or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes hereof, subject to such regulations as this Act and such resolution or trust indenture may provide.

(m) The fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority, and gifts, grants, and contributions from any source whatever, unless otherwise pledged and allocated, may be pledged and allocated by the Board to the payment of the principal of and interest on bonds of the Authority as the resolution authorizing the issuance of bonds, or any trust instrument pertaining thereto, may provide, and such funds so pledged, from whatever source received, including funds received from one or more or all sources, shall be set aside at regular intervals as may

be provided in the resolution or trust indenture, into a special debt retirement fund which shall be pledged to and charged with the payments of (1) the interest on such bonds as such interest shall fall due, (2) the principal of the bonds as same shall fall due, (3) the necessary charges of paying agent or agents for paying principal and interest, and (4) any premium upon bonds retired by call or purchase as hereinafter provided. The use and disposition of such special debt retirement fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in any trust indenture, pertaining thereto, but, except as may otherwise be provided in such resolution or trust indenture, such fund shall be for the benefit of all bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or in any trust indenture, surplus monies in the special debt retirement fund may be applied to the purchase or redemption of bonds and any such bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

(n) Any holder of bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by any trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted hereunder or under such resolution or trust indenture, and may enforce and compel performance, of all duties required by this Act or by such resolution or trust indenture, to be performed by the Authority, or any officer thereof, including the fixing, charging and collecting of fares, fees, rentals, revenues, and other charges for the use of the facilities and services furnished and, in the event of a default of the Authority upon the principal and interest obligations of any bond issue, shall be subrogated to each and every right, specifically including the contract rights of collecting fares, fees, rentals, revenues and other charges against the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett.

(o) The Board is hereby authorized to provide by resolution for the issue of refunding bonds of the Authority for the purpose of refunding any bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof and the duties of the Authority in respect to the same, shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

(p) Bonds of the Authority shall be confirmed and validated, insofar as applicable, in accordance with the procedure of the Revenue Bond Law (Ga. L. 1937, p. 761, et. seq. as amended). The petition for validation shall also make party defendant to such action any municipality, county authority, subdivision or instrumentality of the State of Georgia, if subject to be sued, which has contracted with the Authority for the services and facilities of the project for which bonds are to be issued and sought to be validated and such municipality, county, authority, subdivision, or instrumentality shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof to be determined and the contract or contracts adjudicated as security for the payment of any such bonds of the Authority. The judgment of validation shall be final and conclusive with respect to such bonds, and the security therefor, against the Authority, and against any municipality, county, authority, subdivision or instrumentality of the State of Georgia, if a party to the validation proceedings, contracting with the Authority.

(q) While any of the bonds issued by the Authority remain outstanding, the powers, duties or existence of said Authority, or of its officers, employees or agents, shall not be diminished or impaired in any manner that will affect adversely the interest and the rights of the holders of such bonds, and no other entity, department, agency or authority will be created which will compete with the Authority to such an extent as to affect adversely the interest and rights of the holders of such bonds. The provisions of this Act shall be for the benefit of the Authority and the holders

of any such bonds, and upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of such bonds.

(r) All monies received pursuant to the authority of this Act, whether as proceeds from the sale of bonds, as grants or other contributions, revenues, income, fees and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act.

(s) Bonds issued hereunder shall not be deemed to constitute a debt of any local government in the metropolitan area. Such bonds shall be payable solely from the special debt retirement fund hereinbefore established therefor and the issuance of such bonds shall not directly or indirectly or contingently obligate any local government in the metropolitan area to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, and all such bonds shall contain recitals on their face covering substantially the import of this subsection.

(t) Any action to protect or enforce any rights under the provisions of this Act or any suit or action against such Authority, except as provided in section 9 (c), shall be brought in the Superior Court of Fulton County, Georgia, and any action pertaining to validation of any bonds issued under the provisions of this Act shall likewise be brought in said court, which shall have exclusive, original jurisdiction of such actions.

(u) The Authority may invest and reinvest any idle monies, including funds held in reserve or debt retirement funds not required for immediate disbursement, in bonds or notes of the United States or unconditionally guaranteed by the United States or in bonds or notes of the State of Georgia or unconditionally guaranteed by the State of Georgia, and reconvert same when their proceeds are necessary for disbursement.

(v) The Board may by appropriate action prescribe the circumstances, not inconsistent with law, under which a bond or certificate will be considered as mutilated, destroyed

or lost and may make reasonable provision for its replacement.

Section 11. Equipment Trust Certificates. The Board shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases or equipment trust certificates in the form customarily used and appropriate to effect such purchases. The Board may issue equipment trust certificates in a manner similar to that provided for bonds under section 10. All money required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants and contributions from any source whatever. Payment for such equipment or rentals therefor, may be made in installments; the deferred instaliments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid.

Section 12. Power of Eminent Domain. The Authority shall have no power of eminent domain, but the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett may, for purposes of the Authority, exercise the broadest power of eminent domain available to them or any agency or joint agency thereof, under any statute, and convey to the Authority any property so acquired upon payment or credit for the total cost of any acquisition hereunder. However, no local governing body shall exercise any power of eminent domain hereunder with respect to property located beyond its territorial limits.

Section 13. Removal and Relocation of Utility Structures, Etc. (a) The Authority shall have the power to require any public utility, railroad or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate or main-

tain its rapid transit system, to remove or relocate such installation, structures, equipment, apparatus, appliances or facilities from their locations. If the owner or operator thereof fails or refuses to remove or relocate them, the Authority may proceed to do so. The Authority may provide the necessary new locations, and for that purpose the power of eminent domain as provided in section 12 may be exercised provided the new locations shall not be in, on or above, a public way; the Authority may also acquire the necessary new locations by purchase or otherwise. The Authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus, or appliances.

(b) The Authority shall have the power to prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced by operations of the Authority in carrying out a rapid transit project, and to make relocation payments to or with respect to such persons including the making of such payments financed by the Federal Government.

Section 14. Competitive Bidding on Contracts, Etc.

(a) Except in the acquisition of unique property which for any reason is unobtainable in the open market, and except as hereinafter otherwise provided, competitive bids shall be secured before any acquisition or disposition of properties by contract or otherwise is made by the Authority, or before any contract is awarded for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to the Authority; acquisitions shall be made from, and contracts awarded to, the lowest responsible bidder, and dispositions of property shall be made to the highest responsible bidder. No acquisition of any unique property unobtainable in the open market shall

be made without the express approval of the Board where the amount involved is $5,000 or more. Nothing in this section shall apply to contracts for professional services or the personal services of employees.

(b) All such acquisitions, dispositions and contracts involving $5,000 or more shall be awarded only after advertising in the local newspaper of the largest circulation in the metropolitan area at least once a week in the two weeks prior to the bid opening. Bids shall be publicly opened and read aloud at a date, time and place designated in the invitation to bid. Invitations to bid shall be sent at least one week prior to the bid opening to at least three potential bidders who are qualified technically and financially to submit bids, or, in lieu thereof, a memorandum shall be kept on file showing that less than three potential bidders so qualified exist in the market area within which it is practicable to obtain bids.

(c) Except as otherwise provided in this section, written price quotations from at least three qualified and responsible vendors, or vendees as the case may be, shall be obtained for all acquisitions, dispositions and contracts involving less than $5,000 and over $1,000, or, in lieu thereof, a memorandum approved by the Board shall be kept on file showing that less than three vendors or vendees, as the case may be, so qualified exist in the market area within which it is practicable to obtain quotations. Acquisitions shall be made from, and contracts awarded to, the lowest responsible quotation, and dispositions of property shall be made to the highest responsible quotation.

(d) Acquisitions, dispositions and contracts involving $1,000 or less may be negotiated with or without competitive bidding under sound procurement procedures as promulgated and established by the Board.

(e) Competitive bidding requirements may be waived if it is determined by the general manager, or in such other manner as the Board may by regulation provide, that an emergency directly and immediately affecting customer service or public health, safety or welfare requires im-

mediate delivery of supplies, materials, equipment or services; provided, however, that a record explaining the emergency shall be submitted to the Board at its next regular meeting and thereafter kept on file.

(f) All concessions granted by the Authority for the sale of products or the rendition of services for a consideration on Authority property shall be awarded only pursuant to written specifications after competitive bidding and to the highest responsible bidder in a manner similar to that required in subsection (b).

(g) Contracts for the sale, lease or other disposition of real property owned by the Authority shall be awarded only after competitive bidding and to the highest responsible bidder in a manner similar to that required in subsection (b).

(h) Contracts for the management of Authority-owned property or facilities may be negotiated.

(i) Requirements of the Authority shall not be split into parts for the purpose of avoiding the provisions of this section.

(j) The Authority shall have the right to reject any or all bids or quotations, or parts of any or all bids or quotations, whenever in the opinion of the Board such rejection is necessary for the protection of the interests of the Authority. In every such case a record shall be made setting forth the reason for such rejection which record shall thereafter be kept on file.

Section 15. Conflict of Interests.

(a) Every member of the Board and every employee of the Authority who knowingly has any interest direct or indirect in any contract to which the Authority is or is about to become a party, or in any other business of the Authority, or in any firm or corporation doing business with the Authority, shall make full disclosure of such interest to the Board and, if a Board member, to his appointing au-

thority. Failure to disclose such an interest shall constitute cause for which a Board member may be removed by the appointing power, or an employee discharged or otherwise disciplined at the discretion of the Board.

(b) Provisions of the act of the General Assembly approved March 10, 1964 (1964 Ga. L. p. 261), as amended, regulating the conduct of officers, employees and agents of political subdivisions, municipal and other public corporations and other public organizations, shall be applicable to the conduct of its Board members, officers, employees and agents of the Authority.

(c) Any contract or transaction of the Authority involving a conflict of interest not disclosed under subsection (a) hereof, or a violation of the act of the General Assembly approved March 10, 1964, (1964 Ga. L. p. 261), as amended, or a violation of any other provision of law applicable to the Authority, its Board members, officers, or employees regulating conflicts of interest, shall be voidable by the Board.

Section 16. Financial Accounts, Audits, Reports. (a) The Board shall make provision for a system of financial accounting and controls, audits and reports. All accounting systems and records, auditing procedures and standards, and financial reporting shall conform to generally accepted principles of governmental accounting. Copies of each financial report required under this section shall be furnished to each local governing body of each local government in the metropolitan area. All financial records, reports and documents of the Authority shall be public records and open to public inspection under reasonable regulations prescribed by the Board.

(b) The Board shall adopt a fiscal year, establish a system of accounting and financial control, designate the necessary funds for complete accountability and specify the basis of accounting for each such fund. The Board shall cause to be prepared a financial report on all funds at least quarterly and a comprehensive report on the fiscal operations and conditions of the Authority annually.

(c) On or before the last day of the first month of its fiscal year the Board shall annually employ a firm of independent certified public accountants licensed to practice in this State as auditors to make a continuous audit of the financial books, records, and accounts of the Authority. Such auditors shall have no personal interest directly or indirectly in the fiscal affairs of the Authority and shall be experienced and qualified in the accounting and auditing of public bodies. A contract of employment shall be executed with such auditors prescribing their duties, the period to be covered, the professional fees to be paid, the responsibilities of the Authority and other appropriate matters. The contract shall be awarded upon the basis of professional competence in the field of accounting and auditing for public bodies and subject to the rules of ethics of the American Institute of Certified Public Accountants. Such auditors shall be paid out of the general operating funds of the Authority.

(d) Upon employment such auditors shall perform a complete independent audit for the fiscal year. In such audit they shall point out any irregularities found to exist and report the results of their examination, including their unqualified opinion on the presentation of the financial position of the various funds and the results of the Authority's financial operations. If such auditors are unable to express an unqualified opinion they shall so state and shall further detail reasons for their qualifications or disclaimer of opinion including recommendations necessary to make possible future unqualified opinions. Such auditors shall review and make recommendations in separate opinions in such matters as they may deem appropriate for improvements in records, system procedures, internal control methods, equipment use, organization, administration, insurance coverage and other matters of financial control and relevancy. They shall also be available for continuous financial consultation and shall perform special examinations, studies, management reviews, system design and installation as the Board may direct. The Board may also provide for the independent auditing of any facility of the Authority leased or contracted out to private parties or local governments.

Section 47. Budgets and Budgeting Procedures. (a) The Board shall make provisions for an annual operating budget and an annual capital improvements budget. Every budget, proposed or as finally adopted, shall conform to generally accepted budgetary standards of public bodies. Copies of each budget, proposed or as finally adopted, shall be furnished to each local governing body of each local government in the metropolitan area. In addition to the procedures herein prescribed the Board may adopt such budgetary procedures as it may deem appropriate.

(b) On or before the last day of the tenth month of the fiscal year the Board shall propose an annual operating budget for the ensuing fiscal year and hold a public hearing thereon. After such public hearing the Board shall review its proposed budget, and, on or before the last day of the fiscal year, it shall adopt an annual operating budget for the ensuing fiscal year. In the annual operating budget each operating fund shall be set forth separately and show an estimate of the fund balance to be available at the beginning of the year, an estimate of anticipated credits during the year according to source, an estimate of anticipated charges, including capital outlay or debt service properly to be financed from anticipated revenues, and comparative data on the last two completed fiscal years and similar data, actual or estimated, for the current year. In no event shall a budget be approved which provides for deficit financing with respect to any operating fund.

(c) At the time and in the manner prescribed in subsection (b), insofar as applicable, the Board shall propose and adopt an annual capital improvements budget. The proposed capital improvements budget shall show all capital improvement projects in process of completion, those to be undertaken during the ensuing fiscal year and those anticipated to be undertaken during the ensuing ten years. The proposed budget shall also show the proposed method of financing each proposed project and the effect thereof on the debt structure of the Authority. After a public hearing the Board shall review its proposed budget and on or before the last day of the fiscal year it shall adopt an annual capital improvements budget for the ensuing fiscal year.

No contract for the purchase or construction of any capital improvement project shall be authorized, except to meet a public emergency certified as such by the Board, unless it is included in the annual capital improvements budget; however, the Board may propose and adopt an amendment to the annual capital improvements budget by following the procedure herein prescribed for adopting the original budget.

Section 18. Engineering Survey. At least every three years, the Board shall employ a firm of qualified independent engineers to survey the condition of the Authority's facilities and operations from an engineering standpoint and make a report thereof and any recommendations for improvement in its physical facilities and operating procedures. Copies of such report shall be furnished to each local governing body of each local government in the metropolitan area.

Section 19. Insurance on Leased Property. All contracts for the lease of Authority property shall require the lessee to procure, maintain and pay for insurance to reasonably protect the Authority's liability related thereto, and further to insure the leased property in the Authority's name for its full value against all reasonable and insurable risks. Such contracts shall contain a clause whereby the lessee agrees to indemnify and hold the Authority harmless for the negligence of lessee, his employees and agents.

Section 20. Rules and Regulations; Miscellaneous. (a) The Board may promulgate reasonable rules and regulations, not inconsistent with law, for the control and management of its operations, properties, employees and patrons.

(b) The Board may provide for the recognition of authorized representatives of the employees of the Authority and for bargaining with its employees through such agents in the same manner and to the same extent as if they were the employees of any privately owned transportation system.

(c) All provisions of general law applicable to the records and documents of counties and municipalities and public access thereto shall be fully applicable to the records and

documents of the Authority. The Board shall make reasonable rules and regulations concerning access to its records and documents and may charge reasonable fees for copies on certifications thereof.

(d) As to copies of financial reports and documents under Section 16, budget reports and documents under section 17, engineering reports and documents under section 18, and proposed rapid transit contracts under section 24, the Board may provide for the printing and distribution of a reasonable supply thereof to the public and may, in its discretion, require payment of a reasonable charge therefor.

Section 21. Tax and Regulatory Exemptions. (a) The property of the Authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation. In the event of any lease of Authority property, or any other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest, nor shall it apply to the income of the lessee. Otherwise, however, and for purposes of taxation, when property of the Authority is leased to private parties to be employed solely for purposes of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption hereunder shall apply to such acts and activities.

(b) The Authority shall also be exempt from any regulation by the Public Service Commission of this State, except that when any proposed action of the Authority, or any local government on behalf of the Authority, may place a public utility, railroad or public service corporation in violation of the requirements of the Commission, or create the need for collaboration with respect to compliance with the requirements of the Commission, the Authority shall obtain the Commission's cooperation and approval of the proposed action. In such matters and particularly with respect to the matters contemplated in section 8 (j), the Commission shall cooperate with the Authority to accomplish the purposes and policies of this Act.

Section 22. Tort Liability; Insurance. The Authority shall not enjoy governmental immunity from tort liability, but shall be liable therefor as any private corporation except that no execution shall be levied on any property of the Authority prior to ninety (90) days from the date of a final judgment against the Authority. The Authority shall contract for adequate insurance, indemnification or similar protection against any loss, liability or other risk, hazard or responsibility to which it may be exposed or which it may accept on account of its property, personnel, or operations.

Section 23. Taxing Power Denied. The Authority shall have no power to impose any tax on any subject of taxation within the metropolitan area for any purpose whatsoever.

Section 24. Local Government Participation. (a) Provision for a rapid transit system within the metropolitan area is declared for the purposes of this Act to be an essential governmental function and a public purpose of the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett.

(b) The Board and each local governing body of the counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett, and of the City of Atlanta may negotiate and determine the extent of financial participation and the time or times such financial participation may be required with respect to each of the local governments in order to finance provision for a rapid transit system through the joint instrumentality of the Authority. If such determination contemplates a contractural obligation on the part of a local government to make payments to the Authority over a period of time exceeding one year or a contractural obligation on the part of a local government to issue any bonds or other evidences of indebtedness, such determination shall take the form of a proposed rapid transit contract to be executed between the Authority and the local government. Notwithstanding any other provision of this Act, no contract on the part of any local government to make payments of any kind to the Authority shall become final except by the action of the local governing body thereof;

the negotiation, determination and proposed rapid transit contract contemplated under this subsection shall not be construed to constitute a final contract or obligation, but the final execution of a rapid transit contract shall be completed in every instance in the manner contemplated in subsections (c), (d), (e), or (h) hereof.

(c) As a method of financing the participation required of it, in its entirety or any part thereof, under such a proposed rapid transit contract, a local government may, in the manner prescribed by law and subject to the limitations prescribed by law, issue general obligation bonds, pay over the proceeds thereof to the Authority and thereby complete the execution of the proposed rapid transit contract under which the Authority shall agree to perform for it the aforesaid governmental function and provide the necessary transportation services and facilities.

(d) As an alternative method of financing the participation required of it under such a proposed rapid transit contract, a local government may contract with the Authority by which the Authority may perform for such local government the aforesaid governmental function and obligate itself to pay on a periodic basis for the public transportation services and facilities contracted for, including the payment of the principal of, and interest on, any obligations issued by the Authority for the purpose of financing the cost of any rapid transit project or projects and this may include amounts necessary to establish and maintain reasonable reserves in connection therewith.

(e) When there is a proposed rapid transit contract to be executed between the Authority and a local government under subsection (d), the local governing body may proceed on its own resolution to complete the execution of the contract if it determines that the participation required thereunder may reasonably be financed without the levy of any new or increased tax on the property situated within its territory. In this event, the resolution of the local governing body that the participation required thereunder may reasonably be financed without the levy of any new or increased tax on the property situated within its territory

shall be conclusive of that fact. The Authority under this subsection shall be subject to and limited by any local act heretofore or hereafter enacted, more particularly applicable to the local governing body of any local government.

(f) Otherwise when there is a proposed rapid transit contract to be executed between the Authority and a local government under subsection (d), the local governing body shall call an election and shall submit to the qualified voters thereof, in a referendum as hereinafter provided, the question whether or not the local government should so obligate itself to the extent of the dollar amount or amounts involved therein.

(g) The procedure for holding the referendum called for in subsection (f) shall be as follows: The local governing body shall cause to be published in a newspaper having general circulation throughout the territory of the local government involved, once each week for three weeks immediately preceding the week during which the referendum is to be held, a notice to the electors thereof that on the day named therein an election will be held to determine the question whether or not the local government shall obligate itself to the Authority to the extent of the dollar amount or amounts involved in the proposed rapid transit contract. Such notice shall specify the extent of the total dollar amount or amounts involved under the proposed rapid transit contract. Such special election shall be held at all the election districts within the territorial limits of the local government involved except that an election called by the local governing body of any county within the metropolitan area shall not be held in any part thereof which is within the territorial limits of the City of Atlanta. The ballot submitting the question shall be in a form determined by the local governing body, and the form of the ballot shall be published as a part of the aforesaid notice. Each election held under the provisions of this subsection (including one held within the territorial limits of the City of Atlanta) is hereby declared to be a county election and shall be governed by and conducted in accordance with the provisions of the Georgia Election Code. The board of registrars of each county shall provide the necessary lists for

conducting any such election held within its county. After consolidation, the ordinary shall transmit the returns of such an election to the local governing authority calling the election, or its delegate, who shall officially declare the result. The expense of such an election held within the territorial limits of the City of Atlanta shall be paid by the City of Atlanta.

(h) If a majority of those voting in said election vote in favor of the proposition submitted then the local governing body shall thereby be authorized to complete the execution of a rapid transit contract, or contracts, wherein the total dollar amounts thereof do not exceed the total dollar amounts involved in the proposition submitted.

(i) A local government may elect any method provided in this section to finance the participation required of it in whole or in part, and the election of one method shall not preclude the election of another method with respect thereto or with respect to any additional or supplementary participation determined to be necessary.

(j) When the Authority and a local government have completed the execution of a rapid transit contract in full compliance with the requirements of this Act, such contract shall constitute an obligation on the part of the local government for the payment of which its good faith and credit are pledged, but on no other way can the good faith and credit of any local government be pledged with respect to a rapid transit contract.

(k) Any local government may use public funds to provide for a rapid transit system within the metropolitan area and may levy any taxes authorized to it by law to the extent necessary to fulfill the obligations incurred in contracts with the Authority; provided that no local county govern-

ment shall have the power to levy any tax on any subject of taxation situated within the territorial limits of the City of Atlanta when the City of Atlanta has a contract with the Authority and is itself using its public funds or levying a tax for that purpose.

(l) Any local government may transfer to the Authority any property or facilities, or render any services, with or without consideration, which may be useful to the establishment, operation or administration of the rapid transit system contemplated hereunder, and may contract with the Authority for any other purpose incidental to the establishment, operation or administration of such system, or any part or project thereof or the usual facilities related thereto.

Section 25. Severability. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconsitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional was not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 26. All laws or parts of laws in conflict with this Act are hereby repealed.

Approved March 10, 1965.

See Enrolled Act for affidavit and advertisement.